No. 08-205

In The Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

BRIEF OF *AMICUS CURIAE* CALIFORNIA FIRST AMENDMENT COALITION IN SUPPORT OF APPELLANT ON SUPPLEMENTAL QUESTION

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INTERESTS OF *AMICUS CURIAE*[1]

The California First Amendment Coalition is a nonprofit organization (incorporated under California's nonprofit law and tax exempt under Section 501(c)(3) of the Internal Revenue Code) that is dedicated to freedom of expression – resisting censorship of all kinds – and to promotion of the "people's right to know" about their government so that they may hold it accountable. The Coalition is supported mainly by grants from foundations and individuals, but receives some of its funding from for-profit news media, law firms organized as corporations, and other for-profit companies. Although the Coalition does not endorse candidates for political office, it is outspoken in its public advocacy and values its freedom, and the freedom of its members and supporters, to speak out on controversial issues, whether in the context of a regulated political campaign or otherwise.

[1] Appellee has consented to the filing of *amicus curiae* briefs in support of either party, and its consent has been filed with the Clerk. Appellant has consented to the filing of this *Amicus Curiae* brief, and its consent letter is submitted to the Clerk concurrently with this brief. This brief was not written in whole or in part by counsel for any party, and no persons other than *Amicus* have made any monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The Court need not decide in this case whether compelling state interests invoked to justify limitations on corporate expenditures under 2 U.S.C. § 441b ("Section 441b") may apply to speech by for-profit corporations and unions. That is an issue that is perhaps best left for another day. What is clear, however, is that the First Amendment protects from federal regulation the political speech of independent nonprofit entities and the corresponding right of citizens to hear that speech. There are no compelling state interests advanced by banning the political speech of a nonprofit entity that is independent – meaning that it is neither coordinated with a campaign nor controlled by a for-profit corporation or union. The speech of such an organization is no different, in principle or constitutional terms, from the speech of the people who belong to, contribute money to, or otherwise support it.

Section 441b, *Amicus* submits, may not apply to a nonprofit entity unless the Government proves, under a strict scrutiny analysis, that either: (a) the nonprofit entity is substantially controlled by one or more for-profit corporations or unions; or (b) the nonprofit entity is acting in coordination with a campaign. This test fosters political speech and also preserves an avenue for enforcing compelling state interests, if any, that may warrant restricting expenditures in other circumstances. Under this test, Appellant Citizens United's speech could not be restricted unless the Government could prove that

Citizens United is controlled by one or more for-profit corporations or unions, or that Citizens United is acting in coordination with a campaign.

This new proposed standard may not, however, be squared with this Court's decisions in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), or *McConnell v. FEC*, 540 U.S. 93 (2003), which should be overruled in whole and in part, respectively. Although *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"), provides a measure of protection for independent expenditures by nonprofit entities, *Austin* is unfaithful to those protections, and should be overruled because it permits restrictions on political speech that are not narrowly tailored to any compelling state interests.

McConnell should be overruled to the extent that it upholds Section 203 of the Bipartisan Campaign Reform Act ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81 (2002), which amended Section 441b, because Section 203, on its face, does not have an *MCFL* exception, or any other kind of meaningful exception, for nonprofit entities. Section 203 is overbroad, particularly when read in conjunction with Section 204 of the BCRA, because it removes all protections for nonprofit entities' "electioneering communications."

ARGUMENT

I. *AUSTIN* SHOULD BE OVERRULED BECAUSE IT IMPOSES AN UNCONSTITUTIONAL BURDEN ON THE POLITICAL SPEECH OF NONPROFIT ENTITIES

A. *MCFL* Recognized The Importance Of Permitting Independent Expenditures By Nonprofit Entities

The "central organizational purpose" of the nonprofit in *MCFL* was "issue advocacy, although it occasionally engage[d] in activities on behalf of political candidates." *Id.* at 252 n.6. MCFL had "no shareholders or other persons affiliated so as to have a claim on its assets or earnings." *Id.* at 264. It "was not established by a business corporation or a labor union," and it did not "accept contributions from such entities." *Id.* at 264. These facts led this Court to characterize MCFL as "not the type of 'traditional corporatio[n] organized for economic gain,' that has been the focus of regulation of corporate activity." *Id.* at 259 (citation omitted).

The same can be said for many nonprofit entities, even those that do not maintain their contribution procedures as scrupulously as MCFL. *See generally id.* at 263 ("[s]ome corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status"). *MCFL* should be the ceiling, not the floor, for protecting the political speech of

nonprofit entities. The principles of *MCFL* can and should be extended further. This Court's decision in *Austin*, however, has restricted nonprofits' political speech for nearly two decades in a manner that cannot be reconciled with *MCFL* or the First Amendment.

B. *Austin* Read *MCFL* Too Narrowly And Did Not Give Adequate Breathing Room For Political Advocacy By Nonprofit Entities

In *Austin*, this Court did not extend *MCFL*, but instead read it narrowly to uphold "a direct restriction on the independent expenditure of funds for political speech for the first time in [this Court's] history." *Austin*, 494 U.S. at 695 (Kennedy, J., dissenting); *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 127 S.Ct. 2652, 2678 (2007) (*WRTL II*) (Scalia, J., concurring) ("[*Austin*] was the only pre-*McConnell* case in which this Court had ever permitted the Government to restrict political speech based on the corporate identity of the speaker").

The statute that was upheld in *Austin* prohibited nonprofit corporations from "making any 'expenditure' in connection with an election campaign for state office." *Austin*, 494 U.S. at 696 (Kennedy, J., dissenting). The nonprofit entity in *Austin* was the Michigan Chamber of Commerce, which received more than three-quarters of its funding from business corporations, whose expenditures could be regulated. *Id.* 494 U.S. at 664. This Court held that "[b]ecause the Chamber accepts money from for-profit corporations,

it could . . . serve as a conduit for corporate political spending, . . . [and it] does not possess the features that would *compel* the State to exempt it from restriction on independent political expenditures." *Id.* at 664-665 (emphasis added).

Although the facts of *MCFL* were deemed "essential" to this Court's holding, *MCFL*, 479 U.S. at 263, it was not until *Austin* that this Court held that protection for nonprofits' political speech is available *only* for those nonprofits to which *all* of the facts of *MCFL* apply, *see Austin*, 494 U.S. at 661-665. This interpretation of *MCFL* was overly restrictive, forcing nonprofits into a one-size-fits-all legal straightjacket. This Court's decision in *Austin*, which restricted political speech and served as a basis for the holding in *McConnell*, 540 U.S. at 205, cannot be justified.

1. Section 441b Is A Restriction On Political Speech, And It Is Subject To Strict Scrutiny

"Independent expenditures constitute expression at the core of our electoral process and of the First Amendment freedoms." *MCFL*, 479 U.S. at 251 (internal quotation marks omitted). Restrictions on independent expenditures, such as Section 441b, are unconstitutional unless the restrictions pass strict scrutiny – *i.e.*, unless the government can show that the restriction is both narrowly tailored and supported by a compelling state interest. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 786

(1978) (*Bellotti*); *WRTL II*, 127 S.Ct. at 2664; *Austin*, 494 U.S. at 657; *see also MCFL*, 479 U.S. at 265 ("[w]here at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation").

2. The Statute Upheld In *Austin* Was Not Narrowly Tailored To Advance Any Purportedly Compelling State Interests, And The Decision In *Austin* Should Not Control The Treatment Of Independent Nonprofit Entities Under Section 441b

a. The "Specter Of Corruption" Is Not A Sufficient Reason To Prevent Independent Nonprofit Entities From Engaging In Political Speech

Until *Austin*, the "specter of corruption" was "'the only legitimate and compelling government interest[s] thus far identified for restricting campaign finances[.]'" *Austin*, 494 U.S. at 703 (Kennedy, J., dissenting) (quoting *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 496-497 (1985) (*NCPAC*)). There are no limits on a wealthy individual's independent expenditures, *Buckley v. Valeo*, 424 U.S. 1, 45 (1976), because such expenditures, not made in coordination with a campaign, have "no tendency to corrupt," *Austin*, 494 U.S. at 703 (Kennedy, J., dissenting). There are also no such limits on an

"*MCFL*-nonprofit," *see MCFL*, 479 U.S. at 263, or on a corporation spending money in connection with a referendum put to voters, *Bellotti*, 435 U.S. at 776-777. In *NCPAC*, 470 U.S. at 497-498, this Court held that "the mere hypothetical possibility that candidates may take notice of and reward political action committee (PAC) expenditures by giving official favors was insufficient to demonstrate that the threat of corruption justified the spending regulation," *Austin*, 494 U.S. at 703 (Kennedy, J., dissenting). *See also MCFL*, 479 U.S. at 263 ("[v]oluntary political associations do not suddenly present the specter of corruption merely by assuming the corporate form").

There is no principled reason why the "specter of corruption" should serve as a compelling state interest to restrict the independent political speech of nonprofit entities when such an interest did not serve to justify the restrictions in *Buckley*, *MCFL, Bellotti* or *NCPAC*. Where a nonprofit entity is acting independently of a candidate or campaign, there is no serious risk of corruption whether real or hypothetical.

b. The Concern Over "Aggregated Wealth" Does Not Apply In The Case Of Independent Nonprofit Entities

In *Austin*, this Court accepted another proffered compelling state interest: "the corrosive and distorting effects of immense aggregations of wealth that

are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." *Austin*, 494 U.S. at 660.[2] The concern is not the mere aggregation of wealth itself, but the fear that it will be used to impact the political process adversely: "Direct corporate spending on political activity raises the prospect that resources in the economic marketplace may be used to provide an unfair advantage in the political marketplace." *MCFL*, 479 U.S. at 257.

Even if this concern were compelling in the context of for-profit corporations, it does not apply to independent nonprofit entities because they do not "amass" resources in the "economic marketplace." *Id*. There is a fundamental distinction between the for-profit corporation and the nonprofit: "resources in the treasury of a business corporation . . . are not an indication of popular support for the corporation's political ideas," whereas a nonprofit entity's resources reflect "its popularity in the political marketplace." *Id.* at 259. Thus, there is a correlation between even the rare nonprofit corporation that has "amassed wealth" and the public's support for its ideas.

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[2] This interest has been articulated in many ways: "the need to restrict 'the influence of political war chests funneled through the corporate form;' to 'eliminate the effect of aggregated wealth on federal elections;' to curb the political influence of 'those who exercise control over large aggregations of capital;' and to regulate the 'substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization.' " *MCFL*, 479 U.S. at 257 (citations omitted).

Campaign finance laws such as Section 441b are supposedly designed to protect citizens from the effects of distorted political speech. What really distorts the "political marketplace," however, is the exclusion of the collective voice of citizens who join together as an independent nonprofit entity.[3] Vocal, vibrant and independent nonprofits represent grass-roots democracy at its best. Their political speech should be embraced, not shunned.

In *Austin*, Justice Kennedy stated that even if the "'corrosive and distorting effects of immense aggregations of wealth'" could "justify restricting political speech by for-profit corporations, it is certain that it does not apply to nonprofit entities." *Austin*, 494 U.S. at 703 (Kennedy, J., dissenting). Justice Kennedy reasoned further that a nonprofit entity's political speech should not be silenced merely because the nonprofit entity accepts corporate contributions:

> There is no reason that the free speech rights of an individual or of an association of individuals should turn on the circumstance that funds used to engage in the speech come

[3] If the goal is to limit expenditures by corporations with "amassed" wealth, it would be a less restrictive alternative to limit "the expenditures of only those corporations with more than a certain amount of net worth or annual profit." *Austin*, 494 U.S. at 688 (Scalia, J., dissenting). By contrast, this Court has rejected the argument that the possibility of forming a PAC is an acceptable alternative means for a nonprofit to make independent expenditures. *MCFL*, 479 U.S. at 253-255; *see also Austin*, 494 U.S. at 708 (Kennedy, J., dissenting).

> from a corporation. Many persons can trace their funds to corporations, if not in the form of donations, then in the form of dividends, interest or salary. That does not provide a basis to deprive such individuals or associations of their First Amendment freedoms. The more narrow alternative of record-keeping and funding disclosure is available. A wooden rule prohibiting independent expenditures by nonprofit corporations that receive funds from business corporations invites discriminatory distinctions. The principled approach is to acknowledge that where political speech is concerned, freedom to speak extends to all nonprofit corporations, not the special favorites of a majority of this Court.

Id. at 707 (Kennedy, J., dissenting). *Amicus* advances a more modest approach that would apply to all independent nonprofit corporations, while leaving to another day consideration of whether regulation of the speech of for-profit corporations survives strict constitutional scrutiny.

The new standard proposed by *Amicus* resolves the concern that a nonprofit entity may be used as a conduit to funnel funds from for-profit corporations or unions to campaigns. In *MCFL*, this Court rejected the claim that "the inapplicability of § 441b to MCFL would open the door to massive undisclosed political spending by similar entities, and to their use as conduits for undisclosed spending by business corporations and unions." *MCFL*, 479 U.S. at 262. MCFL,

this Court ruled, posed no threat "at all" to warrant "regulation of political activity." *Id.* at 263.

Likewise, there is no threat posed by nonprofit entities that are not substantially controlled by business corporations or campaigns. In *Buckley*, this Court held that the "absence of prearrangement and coordination of an expenditure with the candidate . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley*, 424 U.S. at 47; *see also NCPAC*, 470 U.S. at 497-498. By parity of reasoning, there is little, if any, danger that an independent nonprofit entity – *i.e.*, one that does not prearrange or coordinate with for-profit corporations, unions or campaigns – will engage in corrupting practices.

c. This Court Repeatedly Has Rejected The Argument That The Government Has A Compelling State Interest In Restricting The Political Speech Of A Corporation In Order To Protect The Views Of Some Of Its Members

The Government has claimed that there is an interest in protecting those who contribute to nonprofit entities because those contributors, may not, for example, wish for their money to be used for electoral campaigns. *See MCFL*, 479 U.S. at 261. This Court dismissed such concerns in *MCFL*: "This concern can be met, however, by means far more narrowly tailored and less burdensome than § 441b's

restriction on direct expenditures: simply requiring that contributors be informed that their money may be used for such a purpose." *Id.*; *see also Bellotti*, 435 U.S. at 792-793 (rejecting the similar argument that a prohibition on speech was needed to protect corporate shareholders "by preventing the use of corporate resources in furtherance of views with which some shareholders may disagree"). There are additional less restrictive alternatives to muzzling a nonprofit entity's speech based on the professed desire to protect the disgruntled member of the nonprofit: "[t]o the extent that members disagree with a nonprofit corporation's policies, they can seek change from within, withhold financial support, cease to associate with the group, or form a rival group of their own." *Austin*, 494 U.S. at 710 (Kennedy, J., dissenting); *see also id.* at 687 (Scalia, J., dissenting).

3. *Austin* Should Be Overruled And Replaced With A New Standard In Order To Give Breathing Room To Nonprofit Entities' Political Speech

Amicus's proposed standard expands the political marketplace, while still allowing for the possibility that the government may be able to justify the regulation of some expenditures by for-profit corporations. Nonprofits must be free from restrictions on their political speech if they are independent of a regulated political campaign and are not substantially controlled by for-profit corporations or unions. For the vast majority of politically active nonprofits, this

formulation provides both clarity and a secure buffer against government intrusion.[4]

The government must bear the burden of demonstrating, with clear and convincing evidence, that a nonprofit organization is either substantially controlled by one or more for-profit corporations or unions or that it is coordinated with a campaign. This is, and should be, difficult to do. Even nonprofits whose biggest supporters are for-profit corporations regularly make decisions without regard to the wishes or perceived interests of those supporters. Some corporate contributors do not expect to wield influence over a nonprofit. Others may expect to, but are surprised to learn that they do not. Either way, the nonprofit's independence should be presumed and its right to speak respected absent clear and convincing evidence of substantial control of the nonprofit entity by one or more for-profit corporations or unions.

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[4] *Amicus* acknowledges that a standard based on who "substantially controls" a nonprofit entity does not provide a bright line as compared to the stringent components of the rare "*MCFL*-nonprofit" (*i.e.*, nonprofits sharing the characteristics of the nonprofit in *MCFL*). "[T]he desire for a bright line rule" does not, however, "constitute a *compelling* state interest necessary to justify any infringement on First Amendment freedom." *MCFL*, 479 U.S. at 263 (emphasis in original). *Austin*'s rigid adherence to the facts in *MCFL* as the only circumstance for permitting nonprofit entities' expenditures may be an easy rule in application, *see Austin*, 494 U.S. at 661-665, but it is not consistent with the First Amendment because it restricts too much speech.

The holding in *Austin* is not compatible with *Amicus*'s proposed standard or the First Amendment because *Austin* presumes that the political speech of nonprofit entities should be restricted, not protected. *Austin* should be overruled.

II. *McCONNELL* SHOULD BE OVERRULED TO THE EXTENT IT UPHOLDS THE FACIAL VALIDITY OF SECTION 203

A. On Its Face, Section 203 Is Unconstitutionally Overbroad

In *McConnell* this Court affirmed Section 203's prohibition of "electioneering communications" and advertisements that are the "functional equivalent of express advocacy" during critical times just before elections occur. *McConnell*, 540 U.S. at 203-209. This portion of *McConnell* should be overruled. On its face, Section 203 restricts the political speech of all corporations, including nonprofit corporations, in a manner that is unconstitutionally overbroad and is not narrowly tailored to any compelling state interest.

This Court has long recognized that "where statutes have an overbroad sweep" and prohibit more core political speech than necessary, "the hazard of loss or substantial impairment of those precious rights may be critical, since those covered by the statute are bound to limit their behavior to that which is unquestionably safe." *Keyishian v. Board of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 609

(1967) (internal citation and quotation marks omitted). In *NCPAC*, this Court struck down as unconstitutionally overbroad a statute that sought to subject political committees to the same restrictions on political speech that applied to for-profit corporations. *NCPAC*, 470 U.S. at 500. The Court so held because the statute "indiscriminately lump[ed]" the two groups together, and applied "a flat, across-the-board criminal sanction" to all political committees despite their not posing the same threat of corruption as for-profit corporations. *Id.* at 496, 500.

Here, Section 203 is guilty of the same type of indiscriminate lumping of dissimilar groups that this Court found unconstitutional in *NCPAC*. Restrictions on the speech of for-profit corporations and unions may be narrowly tailored to meet the government's interests in preventing *quid pro quo* corruption and the perceived distortion of the political marketplace through corporate fortunes amassed in the economic marketplace. *See McConnell*, 540 U.S. at 205. Section 203, however, goes much further.

Section 203 restricts the political speech of nonprofit entities that are neither controlled by for-profit corporations or unions nor coordinated with any campaign. As explained, *supra*, restrictions on these types of nonprofit entities are unconstitutionally overbroad because they do not serve any identified governmental interests, they are not narrowly tailored to ensure that the least restrictive means are used, and they have the practical effect of silencing political speech during the most critical

times in the electoral process. Indeed, "[i]f § 203 has had any cultural impact, it has been to undermine the traditional and important role of grassroots advocacy in American politics by burdening the 'budget-strapped nonprofit entities upon which many of our citizens rely for political commentary and advocacy.'" *WRTL II*, 127 S.Ct. at 2686 (Scalia, J., concurring) (quoting *McConnell*, 540 U.S. at 340 (Kennedy, J., concurring in part, dissenting in part)).

B. Section 203 Facially Violates This Court's Holding In *MCFL*

In *MCFL*, this Court held that Section 441b's restrictions on political speech violated the First Amendment rights of at least some nonprofit entities. *See MCFL*, 479 U.S. at 264-265. Despite this Court's constitutional command in *MCFL*, Congress enacted Sections 203 and 204 of the BCRA, which further expanded the scope of speech restrictions on nonprofit corporations and provided no statutory exceptions for any nonprofit corporations, even "*MCFL*-nonprofits".

While Section 203 of the BCRA was originally drafted to except a very narrow class of nonprofits from the speech restrictions,[5] Congress subsequently

[5] Prior to the Wellstone Amendment, a portion of Section 203 known as the Snowe-Jeffords Amendment had created a limited exemption for nonprofits incorporated under Internal Revenue Code § 501(c)(4) and § 527(e)(1) so long as their political speech was paid for exclusively from funds from individuals

(Continued on following page)

enacted Section 204, the so-called "Wellstone Amendment," which ensured that all corporations – including, without exception, all nonprofit corporations – were subjected to the same prohibitions on political speech that apply to for-profit corporations, despite this Court's contrary holding in *MCFL*. *See* 2 U.S.C. § 441b(c)(6) (withdrawing even narrow class of exemptions for certain nonprofit corporations in the case of "targeted communications," which is defined coextensively with the broader meaning of proscribed "electioneering communications"); *see also McConnell*, 540 U.S. at 209-210; *see also id.* at 338-339 (Kennedy, J., concurring in part and dissenting in part); 147 Cong. Rec. S2846-S2847 (daily ed. Mar. 26, 2001). In enacting Sections 203 and 204, Congress ignored this Court's holding in *MCFL*, and placed facially unconstitutional restrictions on the political speech of all nonprofit entities.

C. An *MCFL* Exception Cannot Be Read Into Sections 203 And 204 Because An Express Purpose Of The Wellstone Amendment Was To Silence Nonprofit Entities

In *McConnell*, this Court acknowledged that Sections 203 and 204 did not, on their face, exempt even *MCFL*-type organizations, let alone a broader

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who were United States citizens, nationals or permanent residents. *See* 2 U.S.C. § 441b(c)(2).

range of nonprofit corporations whose First Amendment rights might otherwise be violated. *See id.* at 211. Nonetheless, this Court "presume[d] that the legislators who drafted [Section 204] were fully aware that the provision could not validly apply to *MCFL*-type entities," and then construed the statute to exempt such entities in order to avoid constitutional infirmities. *Id. Amicus* respectfully submits that the attempt to salvage Sections 203 and 204 through the constructional canon of constitutional avoidance was an error. Constitutional avoidance only applies where the statute in question is "genuinely susceptible to two constructions," and where construction to avoid constitutional infirmities would "maintain[ ] a set of statutes that reflect, rather than distort, the policy choices that elected representatives have made." *Almendarez-Torres v. United States*, 523 U.S. 224, 238 (1998).

The plain language of the BCRA, along with the legislative history surrounding the enactment of the Wellstone Amendment, demonstrate that Congress unambiguously chose not to exempt *MCFL*-type nonprofit corporations – or any other nonprofit entities – from speech restrictions that this Court found objectionable in *MCFL*. *See McConnell*, 540 U.S. at 209 n.90; *see also id.* at 339 (Kennedy, J., concurring in part and dissenting in part). Indeed, Senator Wellstone himself explained that the purpose of his eponymous amendment was to ensure that nonprofit entities such as "the NRA, it can be the Christian right, it can be the Sierra Club" would be subject to

the same restrictions on speech as for-profit corporations and unions. 147 Cong. Rec. S2846-S2847.

Thus, the BCRA "could be understood only as a frontal challenge to *MCFL*." *McConnell*, 540 U.S. at 339 (Kennedy, J., concurring in part and dissenting in part). Under these circumstances, the canon of constitutional avoidance should not have been applied, and the facial unconstitutionality of Sections 203 and 204 should have been remedied by striking down the objectionable portions of 2 U.S.C. § 441b.

CONCLUSION

To properly dispose of this case, the Court should overrule *Austin* and overrule the portion of *McConnell* addressing the facial validity of Section 203 of the BCRA.

Appellant Citizens United is a nonprofit entity that takes some money from for-profit corporations. Appellant's Br. at 5. Under the standard articulated by *Amicus*, Citizens United is presumptively free to disseminate films such as *Hillary: The Movie*. Distribution could be barred only if the government could meet its burden of showing, by clear and convincing

evidence, that Citizens United is substantially controlled by for-profit corporations that are themselves subject to regulation.

Respectfully submitted,

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