

U.S. Supreme Court Stays Montana Campaign Finance Decision

March 2012

On February 17, 2012, the United States Supreme Court stayed the ruling of Montana's highest court in *American Tradition Partnership v. Bullock*. The state court opinion upheld Montana's ban on corporate independent expenditures in apparent defiance of the Supreme Court's 2010 ruling in *Citizens United v. FEC*. The stay will remain in effect until the Supreme Court takes final action on the challenger's petition for certiorari by either denying the petition or granting it and considering the appeal.

In a separate statement, Justice Ginsburg, joined by Justice Breyer, acknowledged the stay's propriety but hinted that the Court's minority plans to confront head-on *Citizens United's* premise that corporate independent expenditures "do not give rise to corruption or the appearance of corruption." In Justice Ginsburg's words, a "petition for certiorari will give the Court an opportunity to consider whether, in light of the huge sums currently deployed to buy candidates' allegiance, *Citizens United* should continue to hold sway."

The Montana Supreme Court opinion, issued on December 30, 2011, upheld a state ban on corporate independent expenditures that bore a conspicuous resemblance to the federal law invalidated in *Citizens United*. The state supreme court tried to distinguish *Citizens United* on two primary grounds, however. First, Montana law permits corporations to make expenditures through "easily implemented and effective" political committees that, the court emphasized, are markedly less burdensome than the PAC alternative rejected by the Supreme Court in *Citizens United*.

Second, the court reasoned that Montana's "unique" vulnerability to corporate political influence supplied a compelling interest in "preserving the integrity of its electoral process" and "encouraging the full participation of the Montana electorate." In particular, the court pointed to the state's history of bribery and corruption during the late 19th and early 20th centuries. As a dissenting opinion by Justice Nelson pointed out, "it is not clear that any of [the cited activities] involved independent expenditures." Justice Nelson's dissent also challenged the majority's reliance on Montana's "unique" interests, noting that the interests in electoral integrity and voter participation were common to all states.

Although the Supreme Court granted American Trade Partnership's application for stay, it did not act on the accompanying request for summary reversal. Corporations, trade associations and others will want to closely monitor this case in the months ahead to determine what effect the decision will have on their First

Amendment rights.