PACING THE BURGER COURT: THE CORPORATE RIGHT TO SPEAK AND THE PUBLIC RIGHT TO HEAR AFTER *FIRST NATIONAL BANK V. BELLOTTI* *

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During the Spring of 1978, the United States Supreme Court invalidated the provisions of a Massachusetts law[1] that regulated corporate contributions or expenditures in connection with questions to be submitted to the electorate. In *First National Bank v. Bellotti*,[2] a bare majority[3] of the Court struck down the provisions of Massachusetts General Laws chapter 55, section 8[4] [hereinafter section 8] prohibiting

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* The views expressed herein are the personal views of the author and should not be equated with an Opinion of the Attorney General. Opinions by the Massachusetts Attorney General are formal documents authorized by statute and recognized as having precedential value by the courts of the Commonwealth.

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1. MASS. ANN. LAWS ch. 55, § 8 (Michie/Law. Co-op. 1978).

2. 435 U.S. 765 (1978). The decision of the Supreme Judicial Court is reported at 371 Mass. 773, 359 N.E.2d 1262 (1977).

3. Justice Powell wrote the opinion of the Court and was joined by Chief Justice Burger and Justices Stewart, Blackmun, and Stevens. The Chief Justice also wrote a concurring opinion dealing primarily with the rights of corporations in the business of communication, perhaps presaging opinions delivered later in the term. Justice White authored one dissenting opinion in which he was joined by Justices Brennan and Marshall, while Justice Rehnquist filed a separate dissenting opinion.

4. MASS. ANN. LAWS ch. 55, § 8 (Michie/Law. Co-op. 1978) provided in relevant part:

> No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, 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 vot-

corporate[5] financial participation in elections, except where the business or assets of a corporation would be materially affected by a particular ballot question.

Neither the Massachusetts statute nor the *Bellotti* case deal directly with the rights of political action committees [PAC's].[6] Nevertheless, one cannot meaningfully discuss the role of PAC's and other artificial entities in the American elective process without assessing the potential impact of the *Bellotti* decision. Various commentators have already undertaken the risky business of speculating on the implications of the *Bellotti* case.[7] In spite of the obvious difficulty of predicting the effects of such close decisions, in this particular case speculation is inevitable. Justice White's dissenting opinion invites such speculation when it strongly intimates that, at the very least,[8] the Court's decision calls into question the validity of the Federal Corrupt Practices Act,[9] as well as a host of state statutes[10] prohibiting corporate contributions to favor or

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ers, 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. No person or persons, no political committee, and no person acting under the authority of a political committee, or in its behalf, shall solicit or receive from such corporation or such holders of stock any gift, payment, expenditure, contribution or promise to give, pay, expend or contribute for any such purpose. . . .

5. The Massachusetts statute does not apply to all corporations. It applies primarily to business corporations and to corporations carrying on particular types of business. *See* note 4 *supra*. By its terms the statute does not proscribe contributions made by most nonprofit corporations. In spite of their overinclusive nature, the words "corporate" and "corporations" are used throughout this Article as the most appropriate shorthand phrases to describe the entities that are prohibited from making certain political contributions or expenditures.

6. The phrase "political action committee" may be of indeterminate origin, but it appears to have gained currency by 1944 when it was used as a term of art by the Congressional Special Committees to Investigate Campaign Expenditures, H.R. REP. No. 2093, 78th Cong., 2d Sess. (1944); S. REP. No. 101, 79th Cong., 1st Sess. (1945). It now has a meaning fixed by federal law. 2 U.S.C. § 44la(a)(4) (1976).

While Massachusetts does not explicitly recognize PAC's, the law does permit creation of multicandidate committees. Such committees, organized pursuant to MASS. ANN. LAWS ch. 55, § 5 (Michie/Law. Co-op. 1978), have many of the attributes of PAC's, but may not be funded by corporate contributions.

7. *See, e.g.*, Birnbaum, *The Constitutionality of the Federal Corrupt Practices Act After First National Bank of Boston v. Bellotti*, 28 AM. U.L. REV. 149 (1979); Fox, *Corporate Political Speech: The Effect of First National Bank of Boston v. Bellotti Upon Statutory Limitations on Corporate Referendum Spending*, 67 KY. L.J. 75 (1979); O'Kelley, *The Constitutional Rights of Corporations Revisited: Social and Political Expression and The Corporation After First National Bank v. Bellotti*, 67 GEO. L.J. 1347 (1979); Note, *Political Speech, Inc.: The Bellotti Decision and Corporate Political Spending*, 13 SUFF. L. REV. 1023 (1979); Note, *Prohibition of Corporate Political Expenditures: The Effect of First National Bank v. Bellotti*, 79 UTAH L. REV. 95 (1979).

8. In one passage the author of the dissenting opinion graphically noted: "If the corporate identity of the speaker makes no difference, all the Court has done is to reserve the formal interment of the Corrupt Practices Act and similar state statutes for another day." 435 U.S. at 821.

9. 2 U.S.C. § 441b (1976 & Supp. III 1979).

10. At the time the *Bellotti* case was submitted to the Court, 28 states other than Massachusetts had enacted statutes restricting or limiting political contributions and singling out corporations for more restrictive treatment than other contributors: ALA. CODE tit. 17, § 286 (1976); ARIZ. REV. STAT. ANN. § 16-471(a) (1976); ARK. STAT. ANN. § 3-1110 (Supp. 1975); IND. CODE § 3-4-3-3 (Supp. 1975); IOWA CODE § 56.29 (Supp. 1976); KAN. STAT. § 25-1709 (1973); KY. REV. STAT. §§ 121.025, 121.035 (Supp. 1976); LA. REV. STAT. ANN. §§ 18:1482, 1483 (West 1976); ME. REV.

oppose political candidates as opposed to ballot questions. The resulting speculation concerning future effects of the case is only valid, however, when it is based on a thorough assessment of the *Bellotti* decision, its logic, its methodology and its precedential underpinnings.

The thesis[11] of this Article is that the decision in *First National Bank v. Bellotti* will indeed have far-reaching effects. The opinion of the Court was logically premised upon the identification of the public's right to receive information as a fundamental, underlying value of the first amendment. Since the Massachusetts statute was seen as unduly interfering with the public's right to hear a protected message, the law was deemed unconstitutional. It is the switch in focus from the right of the speaker to articulate a position to the right of the listener to receive a particular message that is the most significant development in *Bellotti*. Where it will lead is the stuff of which this symposium is made.

FIRST NATIONAL BANK V. BELLOTTI

Statutory prohibitions against corporate political expenditures have existed at both the state[12] and federal[13] level for more than seventy years.[14] Over that period the Commonwealth's Supreme Judicial Court[15] and the Supreme Court of the United States[16] have each had occasion to consider the constitutionality of the restrictions. Until *First National Bank* v. *Bellotti*, neither court had issued a majority opinion[17]

STAT. ANN. tit. 21, §§ 1395.2, 1395.3 (Supp. 1976); MD. ELEC. CODE ANN. § 26-9(b) (Supp. 1976); MINN. STAT. § 210A.34 (Supp. 1973); MO. ANN. STAT. § 130.020.5 (Vernon Supp. 1976); MONT. REV. CODES ANN. §§ 23-4744, 23-4795(1) (Supp. 1972); N.H. REV. STAT. ANN. § 70:2(I) (Supp. 1972); N.J. REV. STAT. §§ 19:34-35 (Supp. 1976); N.Y. ELEC. LAW § 480 (McKinney Supp. 1972); N.C. GEN. STAT. §§ 163-278.14, 163-278.19 (Supp. 1975); N.D. CENT. CODE § 16-20-08 (1975); OHIO REV. CODE ANN. § 3599.03 (Page Supp. 1972); OKLA. STAT. tit. 26, § 15-110 (1975); OR. REV. STAT. § 260.472 (1971); PA. STAT. ANN. tit. 25, § 3225(b) (Purdon 1977); S.D. COMP. LAWS ANN. § 12-25-2 (1969); TENN. CODE ANN. § 2-1932 (Supp. 1976); TEX. ELEC. CODE ANN. art. 14.06 (Vernon 1977); W. VA. CODE § 3-8-8 (1975); WIS. STAT. ANN. § 11.38(1)(a)(1) (West Supp. 1977); WYO. STAT. § 22.1-389(c), (d) (Supp. 1976).

11. An alternate thesis can easily be developed that would confine application of the decision to its own peculiar facts. Such a theory would revolve around the language in the opinion which suggests that the Commonwealth simply failed to meet its burden of demonstrating that corporate financial participation in a political campaign would unduly influence the electoral process. First Nat'l Bank v. Bellotti, 435 U.S. at 788-92. While such a distinction might appeal to future advocates, the broad sweep of the opinion as a whole would stand in stark contrast to this narrow reading of the case. Besides, while it might be an effective piece of advocacy, it would make for a boring law review article.

12. *E.g.*, 1907 Mass. Acts, ch. 576, § 22.

13. Tillman Act of 1907, ch. 420, 34 Stat. 864 (current version at 2 U.S.C. § 441b (1976 & Supp. III 1979)).

14. *See* First Nat'l Bank v. Bellotti, 435 U.S. at 803 (White, J., dissenting).

15. First Nat'l Bank v. Attorney General, 362 Mass. 570, 290 N.E.2d 526 (1972); Lustwerk v. Lytron, Inc., 344 Mass. 647, 183 N.E.2d 871 (1962).

16. *See, e.g.*, Pipefitters Local 562 v. United States, 407 U.S. 385 (1972); United States v. CIO, 335 U.S. 106 (1948).

17. In the 1972 *First National Bank* litigation, see text & note 15 *supra*, Chief Justice Tauro, joined only by Justice Reardon, had suggested that the precursor to MASS. ANN. LAWS ch. 55, § 8 (Michie/Law. Co-op. 1978) violated the first amendment rights of Massachusetts corporations. First Nat'l Bank v. Attorney General, 362 Mass. 570, 590-92, 290 N.E.2d 526, 539 (1972). A

addressing the constitutional issues. In the *Bellotti* case, however, each court reached[18] the constitutional question and interestingly the two courts arrived at diametrically opposite results.

The *Bellotti* case arose in connection with the decision of certain corporate managers to expend[19] corporate funds to oppose a proposed graduated personal income tax amendment scheduled to appear on the ballot in the Massachusetts general elections in November of 1976.[20] In the Spring of 1976, counsel for the ultimate plaintiffs in the case sought assurances from the Attorney General of the Commonwealth that the provisions of section 8 would not be applied to preclude or punish corporate financial participation. When the Attorney General declined to furnish those assurances and informed counsel that he would enforce the statute, two banks and three business corporations sought a declaratory judgment to the effect that the statute unconstitutionally impinged on their freedom of expression.

The case was not "tried," a fact of no small significance to either of the two courts weighing the constitutionality of the law.[21] The petition for declaratory judgment was filed so close to the November election that a full evidentiary trial with subsequent appellate review was unlikely to produce results sufficiently early for the plaintiffs to effectively expend funds to oppose the amendment, assuming of course that they prevailed on their claims.[22] Consequently, the case was submitted to

majority of the State Supreme Judicial Court decided the case on statutory grounds only. *Id.* at 594-95, 290 N.E.2d at 543 (Quirico, J., concurring). Similarly, a dissent by Justice Douglas in United States v. UAW, 352 U.S. 567 (1957), argued that the Constitution required that corporations and unions be permitted to "express views on the issues of an election and on the merits of the candidates unrestrained and unfettered by the Congress." *Id.* at 593 (Douglas, J., dissenting). Again the majority decided the case on much narrower grounds and declined to opine upon the constitutionality of the statute. *Id.* at 590-92.

18. Noting the fact that the Supreme Court had on four prior occasions declined to rule on the constitutionality of the Federal Corrupt Practices Act, one commentator has suggested that the fact that the Court eschewed mootness as a vehicle to avoid deciding the constitutional issue highlights the significance of the majority opinion. Fox, *supra* note 7, at 86-87. While this observation may slightly overstate the case, the fact is that mootness was argued to the Court to provide a way of once again avoiding the decision.

19. Although the plaintiffs always characterized their efforts as involving "expenditures," their history in prior Massachusetts elections was one of making "contributions." Obviously there are differences of constitutional dimension between the two. *See* Buckley v. Valeo, 424 U.S. 1, 15-23 (1976). In this Article, however, the words may on occasion be used interchangeably.

20. Questions appear on the Massachusetts ballot in a number of different ways; constitutional amendments and questions raised by the popular initiative or referendum are governed by a single constitutional provision. MASS. CONST. AMEND., art. 48.

21. In the state court, the method of submission cut against the plaintiffs. There was no evidence that the imposition of a graduated personal income tax would materially affect the plaintiffs' businesses. Since that material effect was seen as the touchstone of a constitutional claim, see text & notes 32-35 *infra*, the lack of evidence on the point was fatal to plaintiffs. In the Supreme Court, however, the tables were reversed. Given the way the court framed the issue, material effect was irrelevant. See text & notes 40-48 *infra*. The inadequacy of the record, therefore, cut against the Commonwealth, which was put to the task of proving that the statute served a compelling state interest, such as the prevention of undue corporate political influence. 435 U.S. at 788-92; see note 11 *supra*.

22. The timing elements of this case are worthy of a preliminary note. Suit was filed in April

the Supreme Judicial Court on an agreed statement of facts.

The lack of a well-developed trial record was not perceived by the state court as an impediment to a decision of constitutional dimensions.[23] The opinion of the state court started from the premise that section 8 potentially implicated certain free speech rights, citing *Buckley v. Valeo*,[24] and noting that political contributions and expenditures "operate in an area of the most fundamental First Amendment activities."[25] This underlying premise was not dispositive to the Massachusetts court, which viewed the more basic question to be whether and to what extent business corporations have first amendment rights.[26]

The Supreme Judicial Court answered that question by stating that while corporations do possess certain rights of speech and expression under the first amendment, those rights are not coextensive with those of natural persons.[27] The opinion recognized that corporations are artificial, legally created entities which "exist only in contemplation of law"[28] and that the Supreme Court has had some difficulty in determining exactly what rights a corporation possesses.[29] In many instances corporations have been held not to possess rights coextensive with natural persons,[30] while in others, corporate rights have been explicitly recognized.[31] After reviewing this complex and often conflicting body of law, the state court attempted to rationalize the disparate results by identifying the source of corporate constitutional rights. According to the opinion, the right of a corporation to speak emanates

of 1976 and the case was argued to the full bench of the Supreme Judicial Court in June. An order upholding the constitutionality of the statute and denying the injunctive relief sought by the plaintiffs was issued by that court in late September, but there was no accompanying opinion. 371 Mass. at 776 n.6, 359 N.E.2d at 1265-66 n.6. The opinion itself was not rendered until February of 1977, approximately three months after the election at which the public considered and rejected the graduated income tax amendment. As a practical matter full appellate review was therefore unavailable in spite of the expedited treatment afforded the case by the parties and the state court. Moreover, even though the plaintiff corporations prevailed before the United States Supreme Court, they did not make the expenditures that prompted them to file suit.

23. 371 Mass. at 781, 359 N.E.2d at 1268.

24. 424 U.S. 1 (1976).

25. 371 Mass. at 782, 359 N.E.2d at 1269 (quoting Buckley v. Valeo, 424 U.S. 1, 14 (1976)).

26. 371 Mass. at 783, 359 N.E.2d at 1269.

27. *Id.* at 784-85, 359 N.E.2d at 1269-70.

28. Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 636 (1819).

29. *See* 371 Mass. at 783-84, 359 N.E.2d at 1269-70.

30. *See, e.g.*, California Bankers Ass'n v. Schultz, 416 U.S. 21, 65 (1974) (corporations do not enjoy privacy rights coextensive with natural persons); Bell v. Maryland, 378 U.S. 226, 230 (1964) (corporations lack freedom of association); Asbury Hosp. v. Cass County, 326 U.S. 207, 210 (1945) (corporations not citizens within the protection of the privileges and immunities clauses of article IV, § 2 of the Constitution and the fourteenth amendment); United States v. White, 322 U.S. 694, 698 (1944) (corporations cannot claim the fifth amendment freedom from self-incrimination).

31. *See, e.g.*, G.M. Leasing Corp. v. United States, 429 U.S. 338, 353 (1977) (corporations have fourth amendment rights); Grosjean v. American Press Co., 297 U.S. 233, 244 (1936) (corporation is a person within the meaning of the due process and equal protection clauses of the fourteenth amendment); Covington & Lexington Turnpike Rd. Co. v. Sandford, 164 U.S. 578, 592 (1896) (corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law).

from its right to protect its property and business interests, and that right in turn stems from the due process and equal protection clauses of the fourteenth amendment.[32] Thus, "when a general political issue materially affects a corporation's business, property or assets," that corporation may claim protection for its contributions to communicate its position on that issue.[33]

In essence the Massachusetts Court opined that corporations lack freedom of speech *per se*, but that they may speak out where their business interests are at stake.[34] The court held that the legislative judgment embodied in the first sentence of section 8 was identical to the limitation imposed by the Constitution. Since the Constitution was perceived as limiting governmental restrictions on corporate speech only when business interests were at stake, and since the challenged state statute permitted contributions whenever a ballot question would "materially affect" a corporation's "property, business or assets," the Supreme Judicial Court reasoned that the statute did not interfere with constitutional guarantees and was not facially invalid as violative of the first amendment.[35]

In their brief to the Supreme Court the plaintiff corporations correctly noted that the state court opinion "never once alluded to the right of the people to hear, although this point was stressed throughout plaintiff's presentation."[36] As the preceding material suggests, the focus of the Massachusetts court was exclusively on the speaker. If the speaker has no right to articulate a particular message, presumably the right to receive that message is not an issue that need be addressed[37] in litigation initiated by the would-be speaker.

Perhaps the state court was also persuaded that the statute would have only a minimal effect on the public's right to hear. The statute did not purport to ban or restrict the dissemination of a particular political message. Instead it was designed to prevent corporate managers from expending business funds to espouse personal views that might be un-

32. 371 Mass. at 784, 359 N.E.2d at 1270.

33. *Id.* at 785, 359 N.E.2d at 1270. *See* Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925).

34. This holding offers a conceptually appealing distinction between *Bellotti* and the recent line of commercial speech cases decided by the Supreme Court. *See, e.g.*, Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976). By definition any corporation involved in commercial speech has a direct constitutionally protected financial interest in that speech.

35. 371 Mass. at 785, 359 N.E.2d at 1270.

36. Brief for Appellant at 43.

37. On appeal to the Supreme Court the Commonwealth also lightly asserted that the public's right to hear was not implicated by this case. Like the state court, the appellee asserted that the crucial question presented was whether corporations possess freedom of speech in situations where business interests are not involved. The appellee further argued that in order to invoke the right to hear, the corporations first had to demonstrate that the statute deprived the public of their views or, more accurately, the views of corporate management, and that the plaintiff corporations failed to make that showing. Brief for Appellee at 18-19.

related to corporate interests. Because corporate executives and all other individuals sharing their interests were free under the statute to express their opinions in their private capacities, the lower court properly could have concluded that the statute did not operate to deprive the public of any information. The operative word in the preceding clause, however, is "could"; the state court could logically have concluded that the public's right to hear was not implicated by the restrictions on corporate political advocacy but it apparently never considered the issue to be necessary to a resolution of the case.

The United States Supreme Court did not agree. Writing for the majority, Justice Powell noted:

> The court below framed the principal question in this case as whether and to what extent corporations have First Amendment rights. We believe that the court posed the wrong question. The Constitution often protects interest broader than those of the party seeking their vindication. The First Amendment, in particular, serves significant societal interests. The proper question therefore is not whether corporations "have" First Amendment rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether § 8 abridges expression that the First Amendment was meant to protect.[38]

The effect of posing the basic question in such a fashion was extremely significant.[39] While the methodology of the state court made it unnecessary to determine whether the public's right to hear was implicated, under the analytical framework of the Supreme Court the existence of a corporate right of free speech was clearly a secondary concern.

The starting point for the Supreme Court was not the identity of the speaker but the content of the speech itself. In *Bellotti*, the appellants desired to express their views[40] on a proposed amendment to the state constitution that was to be submitted to the voters of the Commonwealth at a statewide election. The Court began its analysis by opining that such speech, dealing directly with governmental affairs, was at the very heart of first amendment protection:[41]

38. 435 U.S. at 775-76.

39. As one commentator observed about the rephrasing of the issue in *Bellotti*, "ask a different question, get a different answer." Note, *Prohibition of Corporate Political Expenditure: The Effects of First National Bank v. Bellotti*, 79 UTAH L. REV. 95, 97 (1979).

40. The distinction between the expenditure of funds to finance speech and speech itself was not viewed as constitutionally significant by the *Bellotti* court. That distinction had been the subject of extensive discussion three years earlier in *Buckley v. Valeo*, and further discussion was appropriately eschewed in *Bellotti*.

41. 435 U.S. at 776. For a discussion of the relationship between the first amendment and governmental affairs, see T. EMERSON, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT (1966); A. MEIKELJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948). As one commentator has articulated, representative democracy would be rendered meaningless if the freedom to discuss governmental policies was abridged. BeVier, *The First Amendment and Political Speech: An Inquiry Into The Substance And Limits of Principle*, 30 STAN L. REV. 299, 308

> If the speakers here were not corporations, no one would suggest that the state could silence their proposed speech. It is the type of speech indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech . . . does not depend upon the identity of its source, whether corporation, association, union or individual.[42]

In spite of the conclusory language of this passage, the Court proceeded to pose and answer what it saw as "the question in the case," whether the corporate identity of the would-be speakers deprived "this proposed speech of what otherwise would be its clear entitlement to protection."[43] The Commonwealth's arguments supporting the proposition that corporations lack freedom of speech *per se* were therefore not treated independently on their merits. Instead, the Court started from the position that the proposed speech was presumptively protected and assessed the state's arguments only to determine whether they were sufficient to override the fundamental right of free speech involved in the case.

Unlike the state court, the Supreme Court did not accept "the 'materially affecting' theory as the conceptual common denominator" of previous judicial decisions relating to the first amendment rights of corporations,[44] nor did the Court agree that the "materially affecting" requirement correctly identifies the boundaries of constitutionally protected corporate speech.[45] The Court found it unnecessary to explore the boundaries of corporate first amendment rights or to precisely identify the source of those rights. It was sufficient, under the approach adopted by the majority, simply to reject the assertion made by the state that any right to speak was tied to a corporation's business interests.[46] Thus, while the opinion does not expressly hold that corporations possess a right to speak independent of the public's right to hear, it does stand at a minimum for the proposition that corporate freedom of speech is not merely an incident of corporate property or business rights.

Having articulated the premise that a fundamental first amendment right was affected by the Massachusetts statute, the Court next

(1978). The Supreme Court itself has repeatedly observed that debate of public issues occupies a central position in the panoply of first amendment values. Mills v. Alabama, 384 U.S. 214, 218-19 (1966); Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964); New York Times Co. v. Sullivan, 376 U.S. 254, 269-70 (1964). *See generally* Kalven, *The New York Times Case: A Note On "The Central Meaning of the First Amendment,"* 1964 SUP. CT. REV. 191.

42. 435 U.S. at 777.
43. *Id.* at 778.
44. *Id.* at 781.
45. *Id.* at 784.
46. *Id.* at 777-86.

proceeded to apply a strict scrutiny analysis to the case. The Massachusetts statute failed to meet both prongs of the test: (1) The asserted state interests were not found to be sufficiently compelling to subordinate the first amendment values inherent in corporate political speech;[47] and (2) the statute was held not to be drawn narrowly enough to protect the asserted interests without undue infringement on the public right to hear.[48]

The Commonwealth proffered basically two interests to justify the prohibition of corporate contributions. The first was a desire to remove undue influence from the referendum process, thereby promoting the integrity of the system and confidence in government,[49] and at the same time preserving the paramount role of the individual in the electoral process generally, and more specifically in votes on popular referenda.[50] The majority, however, was not persuaded, either on the record presented[51] or intuitively,[52] that corporations do unduly influence the debate on referenda. Consequently this first justification was summarily dismissed.[53]

47. *Id.* at 786-88. *See* Buckley v. Valeo, 424 U.S. 1, 64 (1976); NAACP v. Button, 371 U.S. 415, 438-39 (1963); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 463 (1958).

48. 435 U.S. at 793-94. *See* Buckley v. Valeo, 424 U.S. 1, 25 (1976) (government must employ means narrowly drawn in restricting protected campaign contributions). Other cases articulating a least restrictive means test in the first amendment include Kusper v. Pontikes, 414 U.S. 51, 58-59 (1973); Shelton v. Tucker, 364 U.S. 479, 488 (1960); United States v. CIO, 335 U.S. 106, 146 (1948) (Rutledge, J., concurring). *See also* Richardson, *Freedom of Expression and the Function of Courts*, 65 HARV. L. REV. 1, 23-24 (1951); Comment, *Corporate Freedom of Speech-First Nat'l Bank v. Attorney General*, 7 SUFF. L. REV. 1117, 1127 (1973).

49. The Court has explicitly recognized a compelling governmental interest in avoiding the appearance of undue influence in the context of elections of candidates. Buckley v. Valeo, 424 U.S. 1, 27 (1976); *see* Pipefitters Local 562 v. United States, 407 U.S. 385, 415-16 (1972); United States v. UAW, 352 U.S. 567, 570 (1957). The appellees were therefore asking that the well-recognized compelling interest be extended to popular referenda as well as to the election of candidates.

50. 435 U.S. at 787-89. The state argued that preserving the preeminent role of the individual was even more pivotal on elections concerning referendum issues than in candidate elections, noting that most states adopted the popular referendum during the progressive era of American history as a means of reducing the influence of special interests, like corporations. Brief for Appellee at 35. *See* Wolfinger & Greenstein, *The Repeal of Fair Housing in California: An Analysis of Referendum Voting*, 62 AM. POL. SCI. REV. 753, 767 (1968). The popular initiative and referendum were portrayed as the people's forum, designed to exclude interest-group and corporate lobbying and to reserve to the individual voters the last word on particular legislative issues. The Court's response was that this situation called for the widest possible dissemination of information from diverse and antagonistic sources such as corporations. 435 U.S. at 790 n.29.

51. 435 U.S. at 789-90.

> If the appellee's arguments were supported by record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes . . . these arguments would merit our consideration. But there has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts, or that there has been any threat to the confidence of the citizenry in government.

Id. (citations omitted).

52. *Id.* at 790. "Nor are appellee's arguments inherently persuasive . . . . [T]he risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Id.* (citations omitted).

53. Certainly the record in *Buckley* contained no detailed facts reflecting the corrupting influence of political contributions, but in the post-Watergate period the Court was willing to accept a congressional determination that an appearance of undue influence was a sufficiently compelling

The Commonwealth fared no better with its second articulated interest. The Appellee had argued that the statute was intended to protect the interests of shareholders by preventing corporate management from expending corporate funds to articulate political views that had nothing to do with the business interests of the corporation and that might be antithetical to the political views of the shareholders. Although the *Bellotti* Court recognized that protection of shareholders was a legitimate governmental interest within the traditional ambit of state authority,[54] it found no substantially relevant correlation between that interest and the Commonwealth's effort to prohibit corporate political contributions.[55] The nexus was lacking in the sense that the statute was perceived as being simultaneously under- and overinclusive.[56] The Court, therefore, ruled that the provisions of section 8, proscribing corporate expenditures to favor or oppose issues presented by the referendum process, were invalid, and reversed the state high court.

Because of its formulation of the issues, the principle[57] dissent may harbor important teachings for PAC's and other artificial entities desirous of exercising freedom of expression. The disagreement between the majority opinion and the dissent authored by Justice White was virtually total in nature. This polarity was probably caused by the fact that the dissent proceeded from the belief that the Massachusetts statute furthered, rather than curtailed, basic first amendment values.[58]

interest to restrict individual political contributions. Buckley v. Valeo, 424 U.S. at 27. In *Bellotti*, the Court paid no deference to the legislative judgment made by the Massachusetts General Court, ignored the burden of proof imposed on appellants by their choice of a suit for declaratory judgment as a vehicle to adjudicate the constitutional issue, and cavalierly dismissed as incomplete the facts in the record that did tend to establish corporate dominance of the referendum process. 435 U.S. at 789-92.

54. *See* Cort v. Ash, 422 U.S. 66, 83-84 (1975) (internal affairs of corporations are traditionally governed by state law); United States v. CIO, 335 U.S. 106, 113 (1948) (shareholders consent is a legitimate prerequisite to corporate contributions to political parties); United States v. Chestnut, 533 F.2d 40, 50-51 n.12 (2d Cir.), *cert. denied* 429 U.S. 829 (1976) (government has strong interest in banning corporate campaign contributions to protect unconsenting shareholders).

55. 435 U.S. at 795.

56. Section 8 was underinclusive because it did not curb corporate lobbying or expenditures on public issues not subject to a referendum. It was viewed as overinclusive because it prohibited contributions even when the shareholders unanimously authorized such a contribution. *Id.* at 793-95. Additional constitutional infirmities identified in the opinion are irrelevant to the thesis of this Article and are therefore not discussed herein.

57. Neither the concurring opinion of the Chief Justice nor the dissenting opinion of Justice Rehnquist contain material not previously discussed that is apt to be of long-term significance to PAC's. The former is noteworthy primarily for its repudiation of the notion that the first amendment "confers upon the 'institutional press' any freedom from government restraint not enjoyed by all others." *Id.* at 798 (Burger, C.J., concurring). The latter's most salient feature is its expression of the singular view of Justice Rehnquist that the first amendment has only limited application to the states. *Id.* at 823 (Rehnquist, J., dissenting). His dissent then traces the reasoning of the state's high court, noting that corporations are artificial creatures of the state, which only enjoy constitutional protections incidental to their business existence and which, therefore, may be prohibited from communicating on nonbusiness related matters. *Id.* at 824-28 (Rehnquist, J., dissenting).

58. *Id.* at 804 (White, J., dissenting).

According to Justice White, the issue in *Bellotti* was whether the Commonwealth could prohibit "corporate management from using the corporate treasury to propagate views having no connection with the corporate business."[59] Justice White answered the question in the affirmative, but began his analysis with the proposition that corporate communications do come within the scope of the first amendment. As Justice White noted:

> There is now little doubt that corporate communications come within the scope of the First Amendment. This, however, is merely the starting point of analysis, because an examination of the First Amendment values that corporate expression furthers and the threat to the functioning of a free society it is capable of posing reveals that it is not fungible with communications emanating from individuals and is subject to restrictions which individual expression is not. Indeed, what some have considered to be the principal function of the First Amendment, the use of communication as a means of self-expression, self-realization, and self-fulfillment, is not at all furthered by corporate speech.[60]

In contrast to the majority, Justice White argued that the nature of the speaker must be a central concern of first amendment analysis.[61]

SPEECH CONTENT AND THE FIRST AMENDMENT

As demonstrated above, the various opinions in *Bellotti* contain a number of statements with direct implications concerning the future of PAC's in American politics. The case is also noteworthy, however, for what it does not explicitly say. First and foremost, none of the opinions stated that corporations have an explicit first amendment right to speak out on all matters. Instead, the protection afforded to corporate contributions in *Bellotti* was found to emanate from the public's right to hear the message those contributions supported.[62] It was therefore the content of the message that triggered the constitutional protection: the intended communication was viewed as political speech that lies at the core of the first amendment. Thus, the public had a right to receive that communication and the state could not unduly interfere with corporate dissemination of the message.

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59. *Id.* at 803 (White, J., dissenting).

60. *Id.* at 804-05 (White, J., dissenting).

61. Recent developments suggest that the apparent polarity of positions in *Bellotti* may be confined to the facts of the particular case. In Consolidated Edison Co. v. Public Serv. Comm'n, 48 U.S.L.W. 4776 (June 17, 1980), Mr. Justice White joined in the opinion of the Court delivered by Mr. Justice Powell invalidating an order by the New York Public Service Commission prohibiting inclusion of public policy inserts in monthly utility bills. The opinion in which they joined is noteworthy not only for its reliance on and discussion of *Bellotti*, but also for its general treatment of the content based on first amendment cases discussed below.

62. *See* text & notes 38-46 *supra.*

Second, and closely related, the decision does not directly invalidate statutory restrictions on corporate contributions to candidates for elective office. It may be, as suggested by Justice White, that such restrictions are slated for an early demise and that they now merely await "formal interment."[63] If such a fate does await governmental restrictions on contributions affecting candidate elections, it will be as a result of an extension of *Bellotti* and the application of its reasoning, not because those restrictions were expressly invalidated by the Court.

When the Court's original decisions were rendered, it was not clear that the Massachusetts ban on corporate contributions to candidates had not already been buried. Although the differences between candidate related contributions and issue related contributions were identified in the opinions, and even though the reasoning of Justice Powell's opinion appeared to suggest that restrictions on the former might survive first amendment scrutiny,[64] in its original form the opinion stated that "[b]ecause § 8 prohibits protected speech in a manner unjustified by a compelling state interest, it must be invalidated."[65] Section 8 prohibits corporate contributions in a variety of political contexts including contributions made to support state political candidates.[66] It was the only Massachusetts law interposing a barrier to corporate financial participation in elective politics. Thus a literal reading of the original principal opinion suggested that the entire Massachusetts statute, including its absolute bar to candidate related corporate contributions, had been invalidated.

The Commonwealth responded to this anomalous situation by filing a petition for rehearing. The petition alternatively requested that the Court modify its opinion, and ultimately the mandate, to invalidate only the portions of section 8 that prohibit corporate contributions and expenditures to favor or oppose ballot questions and not the statute in its entirety. The Court's affirmative response to the Commonwealth's request that the opinion be modified effectively killed any argument that statutory restrictions on corporate contributions to candidates for elective office had themselves been extinguished.

The disparate treatment afforded contributions to candidates may be explained in a number of ways. The simplest explanation is that the *Bellotti* case did not involve a challenge to those provisions of the statute applicable to candidate related expenses. Given the widespread existence of state and federal legislation restricting corporate contribu-

63. *Id.* at 821 (White, J., dissenting).
64. *See id.* at 787-91.
65. Slip Opinion at 29.
66. *See* note 4 *supra.*

tions in that context,[67] the Court could not have been expected to set aside the candidate based restrictions by way of dicta. A second possiblity is that the Court does indeed accept the proposition that "the problem of corruption of elected representative through the creation of political debts"[68] gives rise to a compelling state interest justifying restrictions on corporate contributions to favor or oppose individuals, but not issues.[69]

Yet another intriguing possiblity is that the members of the Court believe that the content inhering in the speech component of business contributions to candidates is less worthy of protection than the message inherent in expenses connected with ballot issues. If *Bellotti* is not an aberration and the Court continues to look first to the content of a communication to determine whether and to what extent that message is protected under the first amendment, the probability is that such an argument will be made in defense of corrupt practices acts. The success of such a defense hangs on how the court resolves the tension between the content based argument and the principle of content neutrality.

Content neutrality has long been cited as a "cardinal principle of the First Amendment."[70] The essence of the principle is contained in the statement that "above all else, the First Amendment means that government has no power to restrict speech because of its message, its ideas, its subject matter, or its content."[71] While the principle is easily stated and its logic compelling,[72] the truth of the matter is that recent Supreme Court practice has been inconsistent with the theory. *Bellotti* is in the mainstream of a series of cases in which the content of regulated speech plays an outcome-determinative role in the decisionmaking process. The two best[73] examples of this trend lie in the way the

67. *See* 435 U.S. at 803 & n.1 (White, J., dissenting).

68. *Id.* at 788 n.26.

69. The implication that candidates cannot be affected by contributions to favor or oppose ballot questions ignores the reality of close association between ballot issues and the political figures espousing particular positions on those issues.

70. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumers Council, Inc., 425 U.S. 748, 776 (1976) (Stewart, J., concurring).

71. Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

72. Courts and commentators alike have frequently alluded to the principle. *See, e.g.*, City of Madison School Dist. No. 8 v. Wisconsin Employment Relations Comm'n, 429 U.S. 167, 176 (1976) (statute barring nonunion teachers from participating at public meeting concerning collective bargaining held unconstitutional because of content based discrimination); Pell v. Procunier, 417 U.S. 817, 828 (1974) (restrictions on prisoners' media contacts valid so long as applied without regard to content of the communication); Gay Students Organization v. Bonner, 509 F.2d 652, 661 (1st Cir. 1974) (university could not restrict student organization's activities because of communicative content of the proposed activity); Stone, *Restrictions of Speech Because of its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. CHI. L. REV. 81, 82 (1978); *The Supreme Court, 1975 Term*, 90 HARV. L. REV. 58, 200 (1976).

73. Cases in the obscenity and commerical speech areas offer paradigmatic illustrations of the point, but content related decisions abound in other areas as well. Cases involving "fighting words" or libel offer two obvious examples. One of the most interesting cases, at least for purposes

Court has treated indecent or obscene speech and the method by which it has handled the recent spate of commercial speech cases.

The issue of disparate treatment depending upon content was most clearly raised in two recent indecent-speech cases: *Young v. American Mini Theatres, Inc.*,[74] and *FCC v. Pacifica Foundation*.[75] The former case involved a challenge to a Detroit zoning ordinance seeking to halt the proliferation of adult theaters. Theaters were classified as adult if they were used to present "material distinguished or characterized by an emphasis on matter depicting, describing, or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' " terms which were themselves defined in the ordinance.[76] The basic thrust of the ordinance was to prohibit the establishment of new adult theaters in close proximity either to a residential area or to two other less than desirable facilities, called "regulated uses," including not only adult theaters but also adult bookstores, bars, pawnshops, poolhalls, and motels.[77]

In upholding the validity of the ordinance, the plurality opinion noted that it would have no real effect on the dissemination of protected films; other outlets were available and members of the public could view the films if they desired to do so.[78] The opinion is noteworthy, however, because of its explicit endorsement of content based restrictions:

> [E]ven though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate that inspired Voltaire's immortal comment. Whether political oratory or philosophical discussion moves us to applaud or to despise what is said, every schoolchild can understand why our duty to defend the right to speak remains the same. But few of us would march our sons and daughters off to war to preserve the citizen's right to see "Specified Sexual Activities" exhibited in the theaters of our choice. Even though the First Amendment protects communication in this area from total suppression, we hold that the State may legitimately use the content

of this Article, is Lehman v. City of Shaker Heights, 418 U.S. 298 (1974). *Lehman* presented the question whether a city operating a municipal transit system that sold advertising space for cards on its vehicles was required to accept paid political advertising on behalf of a candidate for elective office. A plurality of the Court answered the question in the negative, concluding that "[n]o First Amendment forum is here to be found." *Id.* at 304. The continued viability of this holding is suspect because the Court's attitude toward advertising has changed. The intriguing possibility exists, however, that had the regulation been challenged by a group advocating a public-service type position on a ballot issue, even the tenuous condition in *Lehman* might have disappeared.

74. 427 U.S. 50 (1976).
75. 438 U.S. 726 (1978).
76. 427 U.S. at 53.
77. *Id.* at 52 n.3.
78. *Id.* at 60.

of these materials as the basis for placing them in a different classification from other motion pictures.[79]

The plurality opinion in *FCC v. Pacifica Foundation* is equally explicit in its assertion that the content of a message affects the protection afforded that speech. The case arose after the FCC issued a declaratory order holding that a radio station's broadcast of comedian George Carlin's "filthy words" monologue could subject that station to sanctions.[80] The FCC had determined that the monologue was patently offensive because of its constant use of words referring to the excretory and reproductive functions and organs of the human body.[81]

The Court recognized, however, that the words of the monologue were unquestionably speech within the meaning of the first amendment,[82] and that the real issue in the case was whether nonobscene but offensive speech dealing with sex and excretion may be regulated on the basis of its content.[83] The plurality opinion answered that question in the affirmative, stating that while the usage of the dirty words was constitutionally protected in at least some contexts, the sexually explicit references "surely lie at the periphery of First Amendment concern,"[84] and consequently are worthy of less protection.

While the plurality view was strenuously opposed[85] and has been heavily criticized,[86] it was at least correct in its assessment that the Court has not found the first amendment to interpose an impenetrable barrier to content based restrictions and has approved such limitations in a number of instances.[87] One of the emerging areas of less than complete first amendment freedom is that of commercial speech.[88]

Until recently the first amendment was not viewed as a barrier to

79. *Id.* at 70-71. As in *Bellotti*, the Court was sharply divided. Justice Stevens wrote the plurality opinion in which he was joined by the Chief Justice and Justices White and Rehnquist. Justice Powell wrote a separate concurrence and Justice Stewart wrote a ringing dissent for the remaining members of the Court, vigorously contesting the proposition that the "offensive" content of a nonobscene film or book could justify watering down the protections afforded by the first amendment.

80. 438 U.S. at 729-30.

81. *Id.* at 732.

82. *Id.* at 744.

83. *Id.* at 745.

84. *Id.* at 743.

85. Justice Brennan dissented because he found "[t]he Court's misapplication of fundamental first amendment principles so patent, and its attempt to impose *its* notions of impropriety on the whole of the American people so misguided, that [he was] unable to remain silent." 438 U.S. at 762 (Brennan, J., dissenting) (emphasis in original).

86. For critical commentary on the case, see Farber, *Content Regulations and the First Amendment: A Revisionist View*, 68 GEO. L.J. 727, 754-58 (1980); Comment, *Pacifica Foundation v. FCC: Filthy Words, The First Amendment, and the Broadcast Media*, 78 COLUM. L. REV. 164 (1978); Case Comment, *FCC v. Pacifica Foundation: An Indecent (Speech) Decision?*, 40 OHIO ST. L.J. 155 (1979).

87. 438 U.S. at 744-48.

88. The plurality opinion in *Pacifica* noted the existence of differences between commercial speech and other varieties of purer speech, citing Bates v. State Bar of Arizona, 433 U.S. 350 (1977). 438 U.S. at 743, 745, 747 n.24.

state regulation of commercial speech.[89] In 1976 the Supreme Court moved to close this obvious gap in first amendment theory when it decided *Virginia State Board of Pharmacy v. Virginia Consumers Council, Inc.*,[90] but the gap was in fact only partially closed. In *Virginia Pharmacy* the Court rejected the previously held notion that commercial speech was wholly beyond the ambit of first amendment protection.[91] Nevertheless, the Court clung to the concept that there were commonsense differences between speech proposing a commercial transaction and other core varieties of speech, including easier verifiability by the speaker and greater resistance to chilling.[92]

The distinctions, whether real or imagined, between commercial and other purer forms of speech, justify disparities in government regulation of the two types of protected speech. Misleading commercial speech, for instance, may give rise to government imposed sanctions which could not be applied to misleading statements on matters of public concern.[93] Similarly, the Court has refused in commercial speech cases to apply the overbreadth doctrine, an exception to the rule that persons cannot sue to vindicate the constitutional rights of third persons typically applied in other first amendment cases.[94]

It is beyond the scope of this Article to analyze all the recent commercial speech cases[95] or to assess the development of the hybrid treatment afforded restrictions on commercial speech.[96] It is sufficient for the hypothesis of this Article simply to demonstrate that *Bellotti* is part of a movement toward content based evaluation in first amendment cases. The case cannot be dismissed as an aberration; it is a logical

89. Early cases holding the first amendment inapplicable to commercial speech include Breard v. Alexandria, 341 U.S. 622 (1951) (first amendment inapplicable to door-to-door salesmen of magazines); Valentine v. Chrestensen, 316 U.S. 52 (1942) (New York City ordinance prohibiting commercial leafletting on public streets held valid).

90. 425 U.S. 748 (1976).

91. *Id.* at 758-61.

92. *Id.* at 771-72 n.24.

93. *Compare* Bates v. State Bar of Arizona, 433 U.S. 350 *with* Stromberg v. California, 283 U.S. 359 (1930) *and* New York Times v. Sullivan, 376 U.S. 254 (1969). An analogous situation exists with the solicitation of clients by commercially motivated lawyers, Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978), and by lawyers associated with such groups as the American Civil Liberties Union, who claim first amendment protection for their associational activity, *In re* Primus, 436 U.S. 412 (1978).

94. Bates v. State Bar of Arizona, 433 U.S. 350, 380-81 (1977).

95. Among the progeny of *Virginia Pharmacy* not previously cited herein are Friedman v. Rogers, 440 U.S. 1 (1979) and Linmark Associates, Inc. v. Willingboro, 431 U.S. 85 (1977). *Friedman* is particularly interesting for its distinction between speech that only proposes a commercial transaction and the speech involved in *Bellotti*, which the *Friedman* Court described as discussion of government affairs lying at the heart of the first amendment's protection. 440 U.S. at 11 n.10.

96. That analysis is well handled in such scholarly works as Baker, *Commercial Speech: A Problem in the Theory of Freedom*, 62 IOWA L. REV. 1 (1976); Farber, *Commercial Speech and First Amendment Theory*, 74 NW. U.L. REV. 372 (1979); Jackson & Jeffries, *Commercial Speech: Economic Due Process and the First Amendment*, 65 VA. L. REV. 1 (1979); Meikeljohn, *Commercial Speech and the First Amendment*, 13 CAL. W. L. REV. 430 (1977); and Note, *First Amendment and Misleading Advertising*, 57 B.U. L. REV. 833 (1977).

extension of the theory that the first amendment protects the right of the public to hear particular kinds of messages. The essence of evaluating content based limitations is therefore determining which messages might be heard.

CONCLUSION

Where does all of this leave PAC's? To a large extent the question must remain a rhetorical one, because the drift away from the doctrine of content neutrality and toward a sliding scale of first amendment protection based on the content of speech has ramifications far beyond the limited world of PAC's. On the one hand, one could argue that with the emergence of content based regulation PAC's will enjoy virtually unfettered freedom in their future conduct. This is because by definition PAC's are engaged in political speech, and in *Bellotti* political speech has been identified as lying at the heart of the sliding scale of values embraced by the first amendment.

On the other hand, PAC's could continue to find themselves severely restricted in future partisan elections. Their right to speak is extremely tenuous, since it depends upon the Court's perception of the public's right to hear their message. If the Court can distinguish between political and commercial speech, if it will attach one level of protection to offensive but not obscene films or records, a second to sales literature and yet another to political leaflets, then there is no reason to suspect that the Court will not ultimately establish levels of protection even within the area it has previously described as political speech. Thus we may find that one level of scrutiny is applied in cases like *Bellotti* dealing with the debate over ballot issues, and another test is applied to cases like *Buckley v. Valeo* involving contributions to candidates. Under those circumstances, corporations, PAC's, and all other artificial entities may continue to be excluded from financial participation in candidate elections.

Frankly, however, PAC's and other artificial entities are no more adrift on this uncertain first amendment sea than are natural persons. George Carlin and the disc jockey playing "Filthy Words," the Arizona lawyers in *Bates*, and the Massachusetts business corporations in *Bellotti* cannot evaluate their freedom to express themselves without first evaluating the right of the public to hear their expressions. Thus, while *Bellotti* offered short-term first amendment gains to PAC's and to corporations, those gains may indeed be short-lived.