St. Mary's Law Journal

Volume 5 | Number 4 Article 11

12-1-1973

A Corporation May Not Contribute Funds to Affect the Outcome of a Referendum.

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CORPORATIONS—Election Laws—A Corporation May Not Contribute Funds To Affect The Outcome Of A Referendum

Schwartz v. Romnes, 357 F. Supp. 30 (S.D.N.Y. 1973).

Plaintiff, a shareholder of American Telephone and Telegraph Company (ATT), brought a derivative action pursuant to Rule 23.1 of the Federal Rules of Civil Procedure to compel the return of $50,000 which ATT's wholly owned subsidiary, New York Telephone Company, contributed to "Yes for Transportation" (YFT). Yes for Transportation, a nonprofit corporation, used the contribution to support the approval of a transportation bond issue appearing as a proposition on New York City's November 2, 1971 election ballot. Plaintiff contended the expenditure was in violation of Section 460 of the New York Election Law prohibiting a corporation from paying money "for any political purpose whatever."[1] Plaintiff joined ATT, New York Telephone, and YFT as defendants and moved for summary judgment. Although New York Telephone admitted that the contribution was intended to be used and was used to support passage of the proposition, the defendants maintained that the statute did not prohibit the expenditure and that a restriction on corporate political contributions was unconstitutional. Held—*Motion granted.* The prohibition of section 460 includes an effort to affect the vote on a referendum. No constitutional infirmity exists to invalidate the statute where legislative purposes justify regulation.[2] The court further held that the plaintiff had a private right of action to compel the return of the $50,000 under both the common law and New York statutory law.[3] Accordingly, the directors and officers of ATT and New York Telephone were held liable to the plaintiff for the "unlawful use of corporate funds for a political purpose."[4]

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1. N.Y. ELECTION LAW § 460 (McKinney Supp. 1973) provides:
No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, *or for any political purpose whatever,* or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stockholder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor. (Emphasis added).
2. Schwartz v. Romnes, 357 F. Supp. 30, 36 (S.D.N.Y. 1973).
3. *Id.* at 37.
4. *Id.* at 32.

At the federal level[5] and in 33 states,[6] "corrupt practice" statutes prohibit corporate political expenditures.[7] Much of the legislation was enacted during the early 1900's as a response to the popular fear that corporate wealth was being used to subvert the political process.[8] During the reconstruction era following the Civil War the nation had experienced vast industrial expansion. Corporations had grown in both size and number resulting in an increase in concentrated wealth.[9] An opportunity existed for large business organizations to take an active role in the electioneering process

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5. 18 U.S.C. § 610 (1970), *as amended*, Act of Feb. 7, 1972, Pub. L. No. 92-225, § 205, 86 Stat. 10.

6. ALA. CODE tit. 10, § 21-64 (Supp. 1971); ARIZ. REV. STAT. ANN. § 16-471 (1956); CONN. GEN. STAT. ANN. § 9-339 (Supp. 1973); FLA. STAT. ANN. § 104.091 (1973), § 99.161 (Supp. 1973); GA. CODE ANN. § 22-5105 (1970); ILL. ANN. STAT. ch. 73 § 762 (Smith-Hurd Supp. 1973); IND. ANN. STAT. § 29-5712 (1969); IOWA CODE ANN. § 491.69 (1949); KAN. STAT. ANN. § 25-1709 (1964); KY. REV. STAT. ANN. § 123.020 (1971); LA. REV. STAT. ANN. §§ 18:1482, 18:1483 (1969); MD. ANN. CODE art. 33, § 26-9 (Supp. 1973); MASS. GEN. LAWS ANN. ch. 55, § 7 (Supp. 1973); MICH. COMP. LAWS ANN. § 168.919 (1967); MINN. STAT. ANN. § 211.27 (Supp. 1973); MISS. CODE ANN. § 97-13-15 (1972); MO. ANN. STAT. § 129.070 (1966); MONT. REV. CODES ANN. § 94-1444 (1969); NEB. REV. STAT. § 32-1129 (Supp. 1973); N.H. REV. STAT. ANN. § 70:2 (1970); N.J. REV. STAT. §§ 19:34-32, 19:34-45 (1964); N.Y. ELECTION LAW § 460 (McKinney Supp. 1973); N.C. GEN. STAT. §§ 163-269, 163-270 (1972); N.D. CENT. CODE § 16-20-08 (1971); OHIO REV. CODE ANN. § 3599.03 (Page 1972); OKLA. STAT. tit. 26, § 439 (1955); ORE. REV. STAT. § 260.472 (1971); PA. STAT. ANN. tit. 25, § 3225 (1963); S.D. CODE § 12-25-2 (Supp. 1973); TENN. CODE ANN. § 2-2234 (1971); TEX. ELECTION CODE ANN. arts. 14.07, 15.17 (Supp. 1974); W. VA. CODE ANN. § 3-8-8 (1971); WIS. STAT. ANN. § 12.56 (1967).

Corporation enabling acts in most states do not contain express provisions either authorizing or prohibiting political contributions. *See* Garrett, *Corporate Contributions for Political Purposes*, 14 BUS. LAW. 365, 366 (1959). But contributions are prohibited in the corporation acts of at least two states: ALA. CODE tit. 10, § 21-64 (Supp. 1971); IOWA CODE ANN. § 491.69 (1949). At least three states have spending prohibitions in their constitutions: ARIZ. CONST. art. 14, § 18; KY. CONST. § 150; OKLA. CONST. art. 9, § 40. Generally, a corporation's authority to act in matters not regulated by statute is determined by a consideration of the purposes for which the corporation is chartered and the implied authority accompanying that purpose. In the area of political contributions, a corporation may not contribute funds without statutory or charter authorization. McConnel v. Combination Mining & Milling Co., 76 P. 194, 199 (Mont. 1904), *rev'd on rehearing on other grounds*, 79 P. 248 (Mont. 1905); *criticized in* Comment, *Corporate Political Affairs Programs*, 70 YALE L.J. 821, 852-3 (1961); People *ex rel.* Perkins v. Moss, 80 N.E. 383, 387 (N.Y. 1907); *see* 6A W. FLETCHER, PRIVATE CORPORATIONS § 2940, at 643 (perm. ed. rev. repl. 1968). *But see* Garrett, *Corporate Contributions for Political Purposes*, 14 BUS. LAW. 365, 367 (1959).

7. Not all statutory prohibitions explicitly include contributions to influence referenda. ALA. CODE tit. 10, § 21-64 (Supp. 1971) prohibits only contributions to any political party, political committee, or political candidate. But ARIZ. REV. STAT. ANN. § 16-471(a) (1956) provides: "It is unlawful for a corporation organized or doing business in the state to make any contribution of money or anything of value for the purpose of *influencing an election*." (Emphasis added). MO. ANN. STAT. § 129.070 (1966) prohibits any attempt "to influence the result of any election to be held in this state."

8. *See* United States v. UAW-CIO, 352 U.S. 567, 570-83 (1957).

9. *Id.* at 570.

and company funds were soon being used for that purpose.[10] Corporations, however, began contributing large sums for the election of individuals who would vote for company interests.[11] In response to increasing electoral abuse, the New York Legislature in 1906 enacted what is now Section 460 of the New York Election Law.[12] The following year Congress passed the Federal Corrupt Practices Act after the disclosure that large corporate contributions had been made to Theodore Roosevelt's 1904 presidential campaign.[13]

Of the 33 states which have enacted corrupt practice legislation,[14] 22 have statutes similar to section 460 and which, in effect, prohibit corporations from contributing funds "for any political purpose whatever."[15] Few decisions exist, however, to determine whether restrictions on spending "for any political purpose" include contributions to influence referenda. In the 22 states where statutes effectively prohibit all contributions, only four decisions have been found construing either the present statute or similar prior law.[16] In only two cases have courts held corporate spending restrictions

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10. *Id.* at 571.

11. Elihu Root in addressing New York's 1894 Constitutional Convention argued:

> The idea is to prevent . . . the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public.

Hearings Before House Committee on Elections, 59th Cong., 1st Sess. 12 (1894), *quoted in* United States v. UAW-CIO, 352 U.S. 567, 571 (1957).

12. N.Y. ELECTION LAW § 460 (McKinney Supp. 1973) (Historical Note).

13. Act of Jan. 26, 1907, ch. 420, 34 Stat. 864. For a detailed history of the statute see United States v. UAW-CIO, 352 U.S. 567, 570-83 (1957); United States v. Painters Local 481, 79 F. Supp. 516, 519-21 (D. Conn. 1948).

14. Statutes cited note 7 *supra.*

15. ARIZ. REV. STAT. ANN. § 16-471 (1956); CONN. GEN. STAT. ANN. § 9-339 (Supp. 1973); ILL. ANN. STAT. ch. 73, § 762 (Smith-Hurd Supp. 1973); IND. ANN. STAT. § 29-5712 (1969); IOWA CODE ANN. § 491.69 (1949); KAN. STAT. ANN. § 25-1709 (1964); KY. REV. STAT. ANN. § 123.020 (1971); LA. REV. STAT. ANN. § 18:1482 (1969); MICH. COMP. LAWS ANN. § 168.919 (1967); MINN. STAT. ANN. § 211.27 (Supp. 1973); MO. ANN. STAT. § 129.070 (1966); N.H. REV. STAT. ANN. § 70:2 (1970); N.J. REV. STAT. 19:34-32 (1964), prohibiting insurance company contributions for any political purpose whatever; N.Y. ELECTION LAW § 460 (McKinney Supp. 1973); N.C. GEN. STAT. §§ 163-269, 163-270 (1972) (section 163-270 applies only to insurance companies); N.D. CENT. CODE § 16-20-08 (1971); OHIO REV. CODE ANN. § 3599.03 (Page 1972) prohibits contributions for any "partisan" political purpose; PA. STAT. ANN. tit. 25, § 3225 (1963); S.D. CODE § 12-25-2 (Supp. 1973); TENN. CODE ANN. § 2-2234 (1971); TEX. ELECTION CODE ANN. arts. 14.07, 15.17 (Supp. 1974) (the latter permitting contributions where a vote affects the franchise of a corporation having the right of eminent domain); WIS. STAT. ANN. § 12.56 (1967).

16. State v. Terre Haute Brewing Co., 115 N.E. 772, 773 (Ind. 1917) (involving an attempt to convict a corporation for contributions to affect the outcome of a local option election); State v. Fairbanks, 115 N.E. 769, 771 (Ind. 1917) (brewing company president's conviction for contributions to affect outcome of local option election); People v. Gansley, 158 N.W. 195, 197-98 (Mich. 1916) (involving a brewing company's contributions to defeat a local option election which would prohibit the manu-

applicable to public propositions and, therefore, no clear trend has been established.[17]

A lack of authority also exists regarding the constitutionality of spending restrictions. The absence of litigation in the area of corrupt practice legislation as well as a firm judicial approach towards avoidance of constitutional issues, contribute to the small number of court decisions affecting the validity of spending prohibitions.[18] The constitutionality of the Federal Corrupt Practices Act[19] has been before the United States Supreme Court three times within the last 26 years in cases involving labor unions which are also regulated by the statute.[20] On each occasion the court avoided the constitutional issue by statutory construction. Although the Supreme Court has not explicitly decided its validity, the federal law has been upheld in a recent decision by the Court of Appeals for the Eighth Circuit.[21]

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facture and sale of liquor within the county); State *ex rel.* Corrigan v. Cleveland-Cliffs Iron Co., 157 N.E.2d 331, 334 (Ohio 1959) (contributions to affect outcome of bond election). *See also* State *ex rel.* Nybo v. District Court, 492 P.2d 1395, 1399 (Mont. 1972) where a statute prohibiting corporate contributions "in order to aid or promote the interests, success or defeat of any political party or organization" was held inapplicable to prevent contributions to support passage of a surtax. *Id.* at 1399, *quoting* MONT. REV. CODES ANN. § 94-1444 (1969). For cases where corrupt practice restrictions not involving corporate contributions have been held applicable to local elections see State *ex rel.* Morgan v. City of Newton, 23 P.2d 463 (Kan. 1933); Ransom County Farmers' Press v. Lisbon Free Press, 194 N.W. 892 (N.D. 1923); Dickenson v. Nelson, 272 N.W. 297 (S.D. 1937).

17. State v. Fairbanks, 115 N.E. 769, 771 (Ind. 1917) corrupt practice act held applicable to convict the president of Terre Haute Brewing Company for contributions to support passage of a local option election); People v. Gansley, 158 N.W. 195, 197-98 (Mich. 1916).

In State v. Terre Haute Brewing Co., 115 N.E. 772, 773 (Ind. 1917) a corrupt practice statute was held inapplicable to convict the corporation itself. State *ex rel.* Corrigan v. Cleveland-Cliffs Iron Co., 157 N.E.2d 331 (Ohio 1959) involved a corrupt practice statute prohibiting corporate expenditures "for any other *partisan* political purpose" thereby allowing the Ohio Supreme Court to render an interpretation permitting contributions to support approval of bond issues, tax levies, or constitutional amendments. *Id.* at 334 (emphasis added).

18. In Crowell v. Benson, 285 U.S. 22, 62 (1932), Chief Justice Hughes wrote:

> When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

Regarding the duty to avoid constitutional adjudication, see Rescue Army v. Municipal Court, 331 U.S. 549, 568-75 (1947).

19. 18 U.S.C. § 610 (1970), *as amended,* Act of Feb. 7, 1972, Pub. L. No. 92-225, § 205, 86 Stat. 10.

20. Pipefitters Local 562 v. United States, 407 U.S. 385 (1972), *rev'g on other grounds* 434 F.2d 1116 (8th Cir. 1970), *rehearing denied,* 434 F.2d 1127 (8th Cir. 1970); United States v. UAW-CIO, 352 U.S. 567 (1957); United States v. CIO, 335 U.S. 106, 155 (1947), where a minority of the Court was of the opinion that Section 313 of the Corrupt Practices Act, 1925 was clearly unconstitutional as a denial of the first amendment guarantees of freedom of speech, press, and assembly. Section 313 was the predecessor of 18 U.S.C. § 610 (1970), *as amended,* Act of Feb. 7, 1972, Pub. L. No. 92-225, § 205, 86 Stat. 10.

21. In United States v. Pipefitters Local 562, 434 F.2d 1116 (8th Cir. 1970), *re-*

Decisions at the state level can also be found which uphold the validity of spending prohibitions.[22] In *People v. Gansley*,[23] the Michigan Supreme Court upheld the Michigan corrupt practice law and found that it did not deprive corporations of any property rights nor subject them to discriminatory classification in violation of the 14th amendment's due process and equal protection clause.[24] The state legislature, in its attempt to preserve purity in elections, could properly restrict attempts toward manipulation of the political process, particularly where the corporation was not chartered to engage in political advocacy and was acting in a manner contrary to the purpose for which it was organized.[25] Similarly, in *Smith v. Higinbothom*,[26] the constitutionality of a state spending restriction was upheld on the basis of governmental interest in guarding against corruption and preserving the integrity of the electoral process.[27]

The decision in the instant case creates additional authority supporting the validity of spending restrictions and adds to case law[28] interpreting the prohibitions to apply to public propositions. Prior to the court's decision, the constitutionality of section 460 had not been decided nor had the statute been interpreted to apply to efforts to influence the outcome of referenda.[29]

In deciding the extent to which section 460 prohibits political spending, the court considered the only prior judicial interpretation of the statute.

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hearing denied, 434 F.2d 1127 (8th Cir. 1970), *rev'd on other grounds*, 407 U.S. 385 (1972), the court upheld the constitutionality of the Federal Corrupt Practices Act under the first amendment guaranty of freedom of association. The union had been indicted on evidence that a fund established to support the election of candidates for federal office was composed of union money rather than the voluntary contributions of members. In passing on the constitutional issue, Chief Judge Van Ossterhout argued that governmental regulation can prevail against constitutional attack only if the government can demonstrate a compelling interest in such regulation. He went on to state that Congress, in enacting the Federal Corrupt Practices Act, sought to protect the individual union member's political views and his right to withhold political support through money contributions. In giving individuals the freedom to exercise political preferences, Judge Van Ossterhout was of the opinion that Congress was responding to a compelling interest. *Id.* at 1123. *See also* United States v. United States Brewers' Ass'n, 239 F. 163, 169-70 (W.D. Pa. 1916).

22. Smith v. Higinbothom, 48 A.2d 754 (Md. 1946); People v. Gansley, 158 N.W. 195 (Mich. 1916).

23. 158 N.W. 195 (Mich. 1916).

24. *Id.* at 200.

25. *Id.* at 201.

26. 48 A.2d 754 (Md. 1946). Plaintiffs were judges nominated for judicial office who complained that a local bar association was conducting a radio and newspaper campaign in support of the sitting judges in violation of the Maryland corrupt practices law. The statute prohibiting corporation spending was declared constitutional, but the court held that defendant bar association did not violate the provisions of the law. *Id.* at 761, 763.

27. *Id.* at 761.

28. State v. Fairbanks, 115 N.E. 769, 771 (Ind. 1917); People v. Gansley, 158 N.W. 195, 197-98 (Mich. 1916).

29. Schwartz v. Romnes, 357 F. Supp. 30, 32 (S.D.N.Y. 1973).

In *Pecora v. Queens County Bar Association,*[30] plaintiff sought to enjoin a local bar association from endorsing candidates for elective judicial office. The court, in refusing the injunction, found that the bar association had a professional duty to the public to see that only qualified candidates sought judicial office and therefore the association was not using funds for a strictly "political purpose." The court held that a literal construction of section 460 would "stifle freedom of expression" and refused to give the statute that effect.[31]

In *Schwartz,* the defendants relied upon *Pecora*'s liberal construction of "political" in their claim that bond elections did not fall within the statute's prohibitions. The court, however, easily distinguished *Pecora* and found that its liberal interpretation did not preclude a present holding that section 460 prohibits a public utility, such as New York Telephone, from using assets to influence public propositions.[32] In rejecting defendants' argument that support for the bond issue was not "political," the court held that the statute "unambiguously" includes efforts to affect the outcome of referenda.[33]

The district court in *Schwartz,* however, did not specifically uphold section 460's validity. The statute may have been considered clearly constitutional, precluding the necessity for a definitive statement to that end. Judge Carter wrote: "[T]he constitutional standard . . . falls far short of invalidating a statute which would prohibit the use of corporate funds to support the efforts of a second corporation . . . to affect the outcome of an election."[34] If the constitutional issue were superfluous, an analysis of first and 14th amendment rights would not be required. Significantly, the decision was rendered on the basis of "overriding governmental interests" and "legislative purposes" which "justify restriction of the rights of a public utility to engage in political advocacy."[35]

The decision in *Schwartz,* however, is in sharp contrast to the holding in *First National Bank v. Attorney General,*[36] a Massachusetts case decided only 8 months prior to *Schwartz* and the only decision found invalidating corporate spending restrictions. A recent statutory amendment to the state's corrupt practice law prohibited the plaintiff bank from spending money for advertising and publicity in its effort to defeat a proposed state constitutional amendment authorizing a graduated income tax.[37] In its suit for

30. 260 N.Y.S.2d 116 (Sup. Ct. 1965).
31. *Id.* at 123.
32. Schwartz v. Romnes, 357 F. Supp. 30, 33 (S.D.N.Y. 1973).
33. *Id.* at 36.
34. *Id.* at 36.
35. *Id.* at 36.
36. 290 N.E.2d 526 (Mass. 1972).
37. MASS. GEN. LAWS ANN. ch. 55, § 7 (1958), *as amended,* MASS. GEN. LAWS ANN. ch. 55, § 7 (Supp. 1973) prohibited contributions "for the purpose of aiding, promoting or preventing the nomination or election of any person to public office . . .

declaratory relief, the bank contended that as a corporation it must expend funds to express its views and protect its business and a restriction thereof violated the Constitution's first amendment guaranty of freedom of speech. The court noted defendant's argument that corporations are not afforded first amendment protection unless engaged in the business of communication or distribution of newspapers or film.[38] It refused, however, to so limit first amendment guarantees in plaintiff's case where a prohibition on free expression would materially affect plaintiff's business interests. The statutory amendment amounted to impermissible censorship and was held unconstitutional under both the first and 14th amendments.[39]

Significantly, the Massachusetts court held that the defendant Attorney General had failed to show a compelling state interest in disallowing any amount of corporate expression. Since it was not established that plaintiff's anticipated expenditure would unduly influence the election, the court refused to totally prohibit the plaintiff in its attempt to express its views.[40] The opinion in *Schwartz* does not disclose defendants' arguments in their claim that section 460 could not constitutionally prohibit corporate expenditures. As in *First National Bank*, the defendants might have claimed that a restriction on their right of expression would materially affect business. In an attempt to discount "governmental interest" they could have argued that plaintiff failed to show what effect New York Telephone's contribution had on the election.

Surprisingly, the court in *Schwartz* did not refer to *First National Bank* although the prior decision displays a sharp division of authority on the free speech issue. "Overriding governmental interests" were "sufficient" in *Schwartz* to prohibit corporate expenditures; in *First National Bank*, restrictions on spending deprived the corporation of freedom of speech. Factual distinctions exist in cases involving a public utility attempting to influence a bond issue and a federally chartered corporation working to defeat a con-

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or influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." The 1972 amendment added the provision that "no question submitted to the voters 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."

38. First Nat'l Bank v. Attorney General, 290 N.E.2d 526, 536 (Mass. 1972). For a complete discussion of the extent to which corporations have been granted first amendment rights, see King, *Corporate Political Spending and the First Amendment*, 23 U. PITT. L. REV. 847, 854-64 (1962).

39. First Nat'l Bank v. Attorney General, 290 N.E.2d 526, 539 (Mass. 1972). In a series of decisions beginning with Gitlow v. New York, 268 U.S. 652 (1925), the United States Supreme Court has channeled first amendment liberties to the states through the due process clause of the 14th amendment. Gitlow v. New York, 268 U.S. 652, 666 (1925); Stromberg v. California, 283 U.S. 359, 368 (1931); Near v. Minnesota *ex rel.* Olson, 283 U.S. 697, 707 (1931); Schneider v. State, 308 U.S. 147, 160 (1939).

40. First Nat'l Bank v. Attorney General, 290 N.E.2d 526, 539 (Mass. 1972).

stitutional amendment. The slight distinctions, however, do not appear to justify the contrary holdings.

By interpreting section 460 to include efforts to affect the vote on a referendum, the court in *Schwartz* brings New York among those jurisdictions whose similar decisions comprise what may now be called the majority view.[41] On the constitutional issue, the decision is in accord with *People v. Gansley*[42] and *Smith v. Higinbothom*[43] and therefore represents a trend among courts towards upholding the validity of state restrictions on corporate political spending. The court in *Schwartz*, however, did not choose to make a definitive statement upon the constitutional question nor did it engage in a comprehensive examination of guarantees afforded by the Bill of Rights. A thorough analysis in this area could have established strong authority and much needed precedent in the area of corrupt practice legislation, particularly in view of the contrary decision in *First National Bank*.

Corporate contributions to support public propositions often become issues in themselves during the course of a campaign.[44] In reality, the issue is freedom of speech and whether it may be abridged by governmental regulation. Freedom to express one's views is basic to a democratic society; it should be afforded to all. If first amendment liberties have been granted to certain classes of corporations, no rational basis can exist for the denial of the same rights to others.[45] A denial of basic liberties because of the nature of a corporation is not a relevant topic of inquiry. "Indeed, the very inquiry . . . presents a grave danger to our liberties."[46]

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41. State v. Fairbanks, 115 N.E. 769 (Ind. 1917); People v. Gansley, 158 N.W. 195 (Mich. 1916).

42. 158 N.W. 195 (Mich. 1916).

43. 48 A.2d 754 (Md. 1946).

44. Resentment against corporate contributions was reflected in a 1972 California referendum involving passage of a clean environment act. The issue was labeled " 'the great test between the people . . . and the business and industrial despoilers of our land, air and sea,' [the voters] viewing their opponents as 'corporate crooks' engaged in an intentional attempt to deceive the public." Comment, *Corporate Contributions to Ballot-Measure Campaigns*, 6 U. MICH. J. LAW REFORM 781 (1973), *quoting* San Francisco Chronicle, June 2, 1972, at 22, col. 3, and 15, col. 4.

45. In Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501-502 (1952), freedom of expression against censorship was held applicable to motion picture companies; *accord*, Kingsley Int'l Picture Corp. v. Regents of the Univ. of New York, 360 U.S. 684, 690 (1959); Superior Films, Inc. v. Department of Education, 346 U.S. 587, 589 (1954). Similarly, corporations engaged in news publication have been held within the first amendment's protection of freedom of speech. Grosjean v. American Press Co., 297 U.S. 233, 249 (1936).

46. King, *Corporate Political Spending and the First Amendment*, 23 U. PITT. L. REV. 847, 861 (1962).