No. 11-A_________

In the Supreme Court of the United States

American Tradition Partnership, Inc., **Champion Painting, Inc.**, and **Montana Shooting Sports Association, Inc.**, *Petitioners*

v.

Attorney General of the State of Montana, and **Commissioner of the Commission for Political Practices**, *Respondents*

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Montana

Application to Stay Montana Supreme Court Decision Pending Certiorari

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To the Honorable Anthony M. Kennedy
Associate Justice of the United States Supreme Court and
Circuit Justice for the Ninth Circuit

James Bopp, Jr.
Counsel of Record
Richard E. Coleson
Noel H. Johnson
THE BOPP LAW FIRM
1 South Sixth Street
Terre Haute, IN 47807
812/232-2434
812/235-3685 (facsimile)
jboppjr@aol.com
Lead Counsel for Petitioners

Margot E. Barg
WITTICH LAW FIRM, P.C.
602 Ferguson, Suite 5
Bozeman, MT 59718
406/585-5598
406/585-2811 (facsimile)
Local Counsel for Petitioners

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Application to Stay Montana Supreme Court Decision Pending Certiorari

To the Honorable Anthony M. Kennedy, Associate Justice of the United States and Circuit Justice for the U.S. Court of Appeals for the Ninth Circuit:

Petitioners (collectively "Corporations") respectfully move for an order staying the Montana Supreme Court's December 30, 2011, decision—which reversed the trial court's decision declaring unconstitutional Montana's prohibition on corporate independent expenditures (the "Ban") (App.28a)—until this Court resolves all matters connected with the Corporations' planned petition for a writ of certiorari, including any consideration on the merits. Rules 22, 23.

The Montana Supreme Court held the Ban constitutional despite the holding in *Citizens United v. FEC*, 130 S.Ct. 876 (2010), that "[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations," *id.* at 913. Immediate relief is needed to prevent irreparable harm to the Corporations' First Amendment free-speech right. Montana's primary elections are on June 5, 2012, *see* http://sos.mt.gov/Elections/Calendar/index.asp, making it vital that planning begin now for independent expenditures before the election.

The Corporations asked the Montana Supreme Court to stay its decision pending certiorari consideration and any merits consideration by this Court, but that motion was denied. App.110a.

Request to Treat Application as Certiorari Petition, Grant Certiorari, and Summarily Reverse Challenged Decision

The Corporations also request that this matter be referred to the Court, that this application be treated as a petition for a writ of certiorari,[1] that the petition be granted, and that the Montana Supreme Court's decision be summarily reversed. The lower court's refusal to follow *Citizens United* is such an obvious, blatant disregard of its duty to follow this Court's decisions that summary reversal is proper.

Question Presented

Whether this Court's holdings in *Citizens United*—that (a) political committees do not speak for corporations, (b) only quid-pro-quo corruption can justify restricting core political speech, (c) independent expenditures pose no such corruption risk, and therefore (d) a corporate independent-expenditure "ban . . . is not a permissible remedy," 130 S.Ct. at 911—must be followed by lower courts in determining the First Amendment constitutionality of corporate independent-expenditure bans under state law.

Parties to the Proceeding Below

All parties below are listed in the caption. Rule 14.1(b). In the Montana Supreme Court, Western Tradition Partnership, Inc. ("WTP") was listed as the

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[1] The application provides the information required for a certiorari petition, including a word-count certificate.

lead plaintiff-appellee. It has since changed its name to American Tradition Partnership, Inc. ("ATP"), which is reflected in the caption. WTP did not file a notice of appeal with the other two corporations, but the Montana Supreme Court included WTP in the caption and the case opinion as if it were an appellee and WTP is bound by that court's decision, so WTP is lead petitioner here under its new name.

Corporate Disclosure

No petitioner corporation has a parent corporation or any publicly held corporation owning 10% or more of any stock. Rules 14.1(b), 29.6.

Opinions Below

The trial court's Order (App.81a) is unreported but available at 2010 WL 4257195. The Montana Supreme Court's Opinion (App.1a) is unreported but available at 2011 WL 6888567. The order denying a stay in the Montana Supreme Court (App.110a) is unreported.

Jurisdiction

The decision and judgment below were filed on December 30, 2011. Jurisdiction is invoked under 28 U.S.C. 1257.

Constitutions, Statutes, and Rules

The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. amend. I.

The Fourteenth Amendment provides, in relevant part, that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

Montana's corporate independent-expenditure Ban, Mont. Code Ann. 13-35-227, is as follows (the Corporations do not challenge the contribution ban here):

> (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.
>
> (2) A person, candidate or political committee may not accept or receive a corporate contribution described in subsection (1).
>
> (3) This section does not prohibit the establishment or administration of a separate segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee or member of the corporation.
>
> (4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

The "expenditure" definition, Mont. Code Ann. 1-13-101(11), excludes news media stories, commentary, and editorials as follows:

> (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.
>
> (b) "Expenditure" does not mean:
>
> (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
>
> (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;
>
> (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
>
> (iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

"Expenditure" includes "independent expenditures," defined as follows:

> "Independent expenditure" means an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. . . .

Mont. Admin. R. 44.10.323(3).

"'Person' means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6)." Mont. Code Ann. 13-1-101(20).

The penalty provision, Mont. Code Ann. 13-37-128(2), is as follows:

> A person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

Statement of the Case

The Corporations are three corporations operating in Montana. American Tradition Partnership, Inc. ("ATP") (previously Western Tradition Partnership, Inc. ("WTP")) is a nonprofit ideological corporation registered in Montana. The Montana Shooting Sports Association, Inc. ("MSSA") is a nonprofit Montana corporation promoting issues related to shooting sports. Champion Painting, Inc. ("Champion Painting") is a small, family-owned painting and drywall business

and Montana corporation, with no employees or members, whose sole shareholder is Kenneth Champion. The Corporations want to make independent expenditures, but are barred by Montana's Ban.

The State defendants (Respondents) are Montana officials with authority to enforce the Ban against the Corporations. They are sued in their official capacities as the Montana Attorney General and the Commissioner of the Commission for Political Practices. Despite *Citizens United*, the Commissioner believes Montana may constitutionally enforce its Ban. *Compare* 1st Am. Comp. ¶ 18 (App.104a) *with* Answer ¶ 18 (admit).

The First Amendment free-speech claim was raised and preserved in both the trial court and the Montana Supreme Court. Rule 14.1(g)(i). The Corporations filed suit in a Montana trial court to challenge the Ban as a free-speech violation under both the First Amendment and the Montana Constitution. The initial complaint was filed on March 8, 2010, and an amended complaint (App.98a) was filed on April 15, 2010. Count 1 sought a declaratory judgment of unconstitutionality under the First Amendment (App.105a, ¶ 24), quoting *Citizens United* for the proposition that "'[p]olitical speech does not lose its First Amendment protection "simply because its source is a corporation,"'" (App.105a, ¶ 26, citations omitted), and asserting that the Ban "infringes upon the Plaintiffs' political speech freedoms under both the Montana and United States

Constitution" for prohibiting corporate independent expenditures (App.105-06a, ¶ 27).

The trial court granted summary judgment to the Corporations on October 18, 2010. App.95a. It expressly held the Ban unconstitutional under the First Amendment and enjoined its enforcement:

> Therefore, the Court declares that Section 13-35-227(1), MCA, as it pertains to independent corporate expenditures, is unconstitutional and unenforceable due to the operation of the First Amendment to the United States Constitution. Since Section 227 violates the First Amendment to the United States Constitution, this Court sees no need to decide whether Section 227 violates the Montana Constitution. It should here be noted that this ruling has no effect on direct corporate contributions to candidates or to any existing or future disclosure laws that might be enacted.

App.92-93a. Judgment was filed on January 31, 2011. App.96a. The State appealed to the Montana Supreme Court, and the Corporations cross-appealed the denial of attorneys fees.

In the Montana Supreme Court, the State presented this issue:

> Whether the requirement that corporations make candidate campaign expenditures through individual funds voluntarily raised, first enacted as the Corrupt Practices Act of 1912 and now codified at Mont. Code Ann. § 13-35-227, abridges the freedom of speech guaranteed by U.S. Const. amends. I and XIV, or impairs the freedom of speech guaranteed by Mont. Const. art. II, § 7.

Br. of Appellants at 1 (this and other appeal documents are available through http://supremecourtdocket.mt.gov/search/case?case=14335). The Montana Supreme Court decided that *Citizens United* did not control the outcome of this case and upheld the Ban against the First Amendment challenge:

> The Dissents assert that *Citizens United* holds unequivocally that no sufficient government interest justifies limits on political speech. We disagree. The Supreme Court held that laws that burden political speech are subject to strict scrutiny, which requires the government to prove that the law furthers a compelling state interest and is narrowly tailored to that interest. The Court, citing *Wisconsin Right to Life v. FEC*, 551 U.S. 449, 464, 127 S.Ct. 2652, 2663-64 (2007), clearly endorsed an analysis of restrictions on speech, placing the burden upon the government to establish a compelling interest. *Citizens United*, 130 S.Ct. at 898. Here the government met that burden.

App.10-11a. The Montana Supreme Court found that the State had established compelling governmental interests to support the Ban:

> *Citizens United* does not compel a conclusion that Montana's law prohibiting independent political expenditures by a corporation related to a candidate is unconstitutional. Rather, applying the principles enunciated in *Citizens United*, it is clear that Montana has a compelling interest to impose the challenged rationally-tailored statutory restrictions. We reverse the District Court and enter summary judgment in favor of the Montana Attorney General and the Commissioner of Political Practices and against WTP, MSSF [sic] and Champion.

App.28a. Though the Montana Supreme Court discussed certain aspects of Montana constitutional law, App. 21a, it did not reach the Montana constitutional claim. App.7a.

Standards for Granting a Stay

"In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court." 28 U.S.C. 2101(f). For a stay to be granted, the moving party must show "a likeli-

hood of irreparable injury that, assuming the correctness of the applicants' position, would result were a stay not issued; a reasonable probability that the Court will grant certiorari; and a fair prospect that the applicant will ultimately prevail on the merits." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 510 U.S. 1309, 1310 (1994). Justice Brennan provided the following test for stays:

> First, . . . a "reasonable probability" that four Justices will consider the issue sufficiently meritorious to grant certiorari . . . . Second, . . . a fair prospect that a majority of the Court will conclude that the decision below was erroneous. . . . Third, . . . that irreparable harm is likely to result from . . . denial . . . . Fourth, in a close case it may be appropriate to "balance the equities" . . . .

Rostker v. Goldberg, 448 U.S. 1306, 1308 (1980) (Brennan, Circuit Justice) (citations omitted) (granting stay pending appeal). This test also governs cases from state courts. *See In re Roche*, 448 U.S. 1312 (1980) (Brennan, Circuit Justice) (granting stay of decision of state court).

Reasons to Grant a Stay and Certiorari and to Reverse the Decision Below

The reasons to grant a stay are also reasons to treat this application as a petition for a writ of certiorari, to grant certiorari, and to summarily reverse.

I. A Certiorari Grant and Merits Success Are Likely.

There is more than a "reasonable probability" that four Justices will vote to grant certiorari and more than a "fair prospect" that the Corporations will prevail on the merits. *Rostker*, 448 U.S. at 1308. These outcomes are likely.

A. The Decision Below Conflicts With *Citizens United*.

There were two dissenters to the Montana Supreme Court's decision. Before cataloging the errors of the decision below, considering what the dissenters said to their five colleagues highlights the outright refusal of the majority to follow *Citizens United*, 130 S.Ct. 876 (2010).

Justice Nelson wrote an extended dissent explaining in detail why the majority was wrong in not following *Citizens United*. App.36-80a. He began by saying that *Citizens United* left state courts no option:

> The Supreme Court could not have been more clear in *Citizens United* . . . : corporations have broad rights under the First Amendment to the United States Constitution to engage in political speech, and corporations cannot be prohibited from using general treasury funds for this purpose based on antidistortion, anticorruption, or shareholder-protection interests. The language of the *Citizens United* majority opinion is remarkably sweeping and leaves virtually no conceivable basis for muzzling or otherwise restricting corporate political speech in the form of independent expenditures.

App.36a. In considering whether "Montana identified a compelling state interest, not already rejected by the Supreme Court, that would justify the outright ban," App.36a, he noted that "the Supreme Court has already rebuffed each and every one of them," App.36a. He reminded the state justices of their oaths to abide by the U.S. Constitution, as interpreted by this Court:

> [W]hen the highest court in the country has spoken clearly on a matter of federal constitutional law, as it did in *Citizens United*, . . . this Court . . . is not at liberty to disregard or parse that decision in order to uphold a state law that, while politically popular, is clearly at odds with the Supreme Court's decision. This is the rule of law and is part and parcel of every judge's and justice's oath of office to "support, protect and defend the consti-

> tution of the United States." In my view, this Court's decision today fails to do so.

App.41a.

Justice Baker also dissented, stating her agreement

> with Justice Nelson that we are constrained by *Citizens United* to declare [the Ban] unconstitutional . . . . In my view, the State of Montana made no more compelling a case than that painstakingly presented in the 90-page dissenting opinion of Justice Stevens and emphatically rejected by the majority in *Citizens United*."

App.29a.

The Montana Supreme Court tried to distinguish *Citizens United*. It said that *Citizens United* did not decide that corporations may make independent expenditures as a matter of law, but based on that case's unique facts: "*Citizens United* was decided under its facts or lack of facts." App.10a. The Montana Supreme Court claimed that "the District Court failed to give adequate consideration to the record," but said "[w]e do so now, because, unlike *Citizens United*, this case concerns Montana law, Montana elections and it arises from Montana history." App.11a.

This is erroneous because, while a Montana law is at issue, Montana law does not control the analysis, and the state court's analysis under the *federal* constitution and *Citizens United* was erroneous on all controlling analytical points. These are considered in turn.

1. The State Court Rejected this Court's Holding that a PAC-Option Is a Ban Because PACs Do Not Speak for Corporations.

The Montana Supreme Court refused to follow this Court's clear holding that a corporation's political committee ("PAC") does not speak for a corporation. This Court held that "[a] PAC is a separate association from the corporation. So the PAC . . . does not allow corporations to speak." *Citizens United*, 130 S.Ct. at 897. But the state court found the Ban "narrowly tailored" because "WTP can still speak through its own political committee/PAC." App.28a.

The Montana Supreme Court also said that "the [Ban] only minimally affects . . . MSSF [sic] and Champion," App.28a, because "Mr. Marbut, on behalf of MSSF [sic], has been an active fixture in Montana politics" and "the burden upon Kenneth Champion . . . to establish a political committee . . . are [sic] particularly minimal," App.11-12a. But Mr. Marbut and Mr. Champion are not the plaintiff *corporations*, which are separate legal entities and have their own rights to make general-corporate-fund independent expenditures. The Montana Supreme Court refused to apply this foundational holding of *Citizens United*, attempting to evade it by transparent misdirection.

The Montana Supreme Court argued that *Citizens United* turned instead on the difficulties of federal PAC compliance. It argued that *Citizens United* does not control because "Montana . . . political committees are easy to establish and easy to use to make independent expenditures . . . ." App.28a. But *Citizens*

United held that "*[e]ven if a PAC could somehow allow a corporation to speak—and it does not*—the option to form PACs does not alleviate the First Amendment problems with [a ban]. PACs are burdensome alternatives." 130 S.Ct. at 897 (emphasis added). The state court ignored the italicized part of this quote, pretending that *Citizens United* just held that PACs are burdensome, and then argued that Montana PACs are less burdensome so the Ban is "narrowly tailored." App.28a. Putting aside the fact that Montana PAC burdens remain onerous,[2] Montana's Ban is a *ban* and therefore "not a permissible remedy," *Citizens United*, 130 S.Ct. at 911.

2. The State Court Rejected this Court's Holding that Strict Scrutiny Applies to the Corporate Ban.

The Montana Supreme Court also refused to apply this Court's First Amendment strict-scrutiny analysis to Montana's Ban. *Citizens United* was unequivocal in requiring strict scrutiny of both the corporate ban and the PAC-option: "Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" 130 S.Ct. at 898 (citation omitted).

But the Montana Supreme Court held that, even though the MSSA and Champion Painting *corporations* could not make independent expenditures, the

[2] *See Montana Chamber of Commerce v. Argenbright*, 266 F.3d 1049 (9th Cir. 2000) ("requiring corporations to make independent expenditures (even for candidates) through a segregated fund burdens corporate expression").

availability of other speech options (PAC or individual) meant that "the statute has no or minimal impact" on them so "the State is not required to demonstrate a compelling interest to support [the Ban]." App.27a. The State "is required only to demonstrate the less exacting sufficiently important interest." App.27a.

Regarding WTP, the state court held that the Ban was "narrowly tailored," because "WTP can still speak through its own . . . PAC," App.28a, and that Montana has "compelling interests," App.23a. This terminology makes it *seem* that the lower court applied this Court's First Amendment strict scrutiny, but it did not. True, the decision below recited that this Court requires "strict scrutiny" of "[l]aws that place severe burdens on fully protected speech" and "intermediate scrutiny" of "laws that place only a minimal burden or that apply to speech that is not fully protected." App.21a. But at every opportunity, the state court downplayed the burden on the Corporations (because they had a PAC-option and an individual-speech option and because Montana PAC burdens are purportedly non-onerous), so it is not clear that *First Amendment* strict scrutiny was ever applied. And the state court never said that it was actually applying First Amendment strict scrutiny, nor did its analysis reflect the strictness of this Court's First Amendment strict scrutiny. Rather, the state court employed complaisant scrutiny, whatever the court called it.

The Montana Supreme Court immediately shifted from the scrutiny required for severe burdens by the *First Amendment* and *this Court* to what *Montana* law

requires. App.21a. The state court's declaration that *Citizens United* does not control "because . . . this case concerns Montana law," App.11a, was here applied (erroneously) to the level of scrutiny. Since the state court never reached the state constitutional claim, the scrutiny required by *Montana* law was irrelevant. The state court did not recite the term "strict scrutiny" in its explanation of what state law requires, saying only that a "compelling interest" is required: "Under Montana law the government must demonstrate a compelling interest when it intrudes on a fundamental right, and determination of a compelling interest is a question of law." App.21a (citation omitted). The state court did hold that the Ban "is narrowly tailored," App.28a, though it never said that Montana law required that analysis. In any event, the "compelling interest" required by Montana law must not be as "compelling" as the "compelling interest" that this Court requires for First Amendment burdens because the state court proceeded to find interests compelling that this Court held not to be compelling in *Citizens United* as a matter of law.

3. The State Court Rejected this Court's Holding that No Cognizable Interest Justifies Banning Corporate Independent Expenditures.

The Montana Supreme Court refused to abide by this Court's holding—as a matter of law—that *no* interest was sufficiently compelling to justify banning corporate independent expenditures. *See Citizens United*, 130 S.Ct. at 904-11. As state Justice Nelson declared in dissent: "The Supreme Court in *Citizens United*

. . . rejected several asserted governmental interests; and this Court has now come along, retrieved those interests from the garbage can, dusted them off, slapped a 'Made in Montana' sticker on them, and held them up as grounds for sustaining a patently unconstitutional state statute." App.72a. Justice Nelson then moved systematically through proffered and possible interests, showing the majority how each failed as a matter of law. App.47-53a, 62-72a.

a. Preserving the Integrity of the Electoral Process.

The Montana Supreme Court asserted that Montana has a compelling interest in preventing corruption or its appearance, i.e., "a clear interest in preserving the integrity of its electoral process," App.23a, for which it cited Montana's history of "corrupt practices and heavy-handed influence asserted by the special interests controlling Montana's political institutions," App.22a. The state court acknowledged that the Anaconda Company, which the court said had dominated Montana politics in the late 1800s and early 1900s, was no longer in control. App.18a. But it tried to show that the threat later endured because "the Anaconda Company maintained controlling ownership of all but one of Montana's major newspapers until 1959." App.17a. Such a purported threat is not cognizable because, inter alia, Montana asserts no anti-corruption interest regarding news media, excluding from the "expenditure" definition "the cost of any bona fide news story, commentary, or editorial distributed through . . . any . . . newspaper." Mont. Code Ann. 13-1-101(11)(b).

This is not the first time that Montana has tried to use events of over a century ago to justify not following the U.S. Constitution and this Court's holdings. In *Canyon Ferry Road Baptist Church of East Helena v. Unsworth*, 556 F.3d 1021 (9th Cir. 2009), the Ninth Circuit held that a Montana campaign-finance law imposing PAC-style registration and periodic reporting burdens on "incidental political committees" was unconstitutional as applied to a church that made de minimis expenditures in connection with supporting a ballot initiative supporting traditional marriage. Commissioner Unsworth, of the Montana Commission for Political Practices, had brought an enforcement action against the church for not registering and filing periodic reports as an "incidental political committee" for (1) a pulpit exhortation to sign the initiative petition, (2) making petition forms available in the foyer, and (3) allowing a woman to copy a few petition forms on the church copier, using her own paper. *Id.* at 1029. The Commission subjected the church to an investigation and decided that the church was in violation of state law. The church went to federal court, challenging the applicable provisions on vagueness and free speech grounds under the U.S. Constitution. The Ninth Circuit decided that the relevant law was unconstitutionally vague except as to the use of the copier. *Id.* at 1029-30. So the whole case boiled down to the informational value of imposing PAC-style requirements based on the value of a bit of toner and the machine wear of a few copies. The court decided that Montana's "'zero dollar' threshold for disclosure is 'wholly

without rationality.'" *Id.* at 1033. As here, the State argued that "the retail nature of Montana's politics requires a low reporting threshold," which the Ninth Circuit rejected. *Id.* at 1034 n.17.

Judge Noonan, concurring in the *Unsworth* decision, also noted that the Commissioner brought up "the bad old days of domination by the Anaconda Company," but, he noted, "[s]mall contributors are not the Anaconda Company." *Id.* at 1036. He made clear that Montana's PAC-style burdens for an "incidental political committee" were onerous. *Id.* at 1035-36. And he pronounced Commissioner Unsworth's actions "petty bureaucratic harassment." *Id.* at 1037.

In *Citizens United*, Montana again advanced the Anaconda scare. The Montana Attorney General (a party in the present case) and the Montana Solicitor (as counsel of record) filed an amici curiae brief for several states arguing that *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), should not be overruled and making the same sort of arguments made in this case, including Montana's history with Anaconda. Brief Amici Curiae of Montana et al. at 7, *Citizens United*, 130 S.Ct. 876. This Court cited the brief, noting that coupling legal corporate lobbying with a corporate independent-expenditure ban led to "the result . . . that smaller or nonprofit corporations cannot raise a voice to object when other corporations, including those with vast wealth, are cooperating with the Government." 130 S.Ct. at 907. Thus, this Court did not accept

Montana's arguments, holding that Montana's system caused problems instead of correcting them.

Notably missing from the Montana Supreme Court's opinion below is application of this Court's holding that *independent* expenditures pose *no* quid-pro-quo-corruption risk. The state court recited that this Court "concluded that 'independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.'" App.9a (*quoting Citizens United*, 130 S.Ct. at 909). But it avoided noting the controlling fact—that this Court was deciding this issue *as a matter of law*, dismissing any possibility of a remaining open question. As this Court put it:

> A single footnote in [*First National Bank of Boston v.*] *Bellotti* purported to leave open the possibility that corporate independent expenditures could be shown to cause corruption. 435 U.S.[765,] 788, n. 26 [(1978)]. For the reasons explained above, we now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.

Citizens United, 130 S.Ct. at 909. This Court noted, *id.* at 908, that the final resolution of the issue as a matter of law was based on the holding in *Buckley v. Valeo*, 424 U.S. 1 (1976), that "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id.* at 47.

This Court's foreclosure of any possibility that independent expenditures can pose a quid-pro-quo-corruption risk did not permit Montana to act as if this foreclosure had not occurred. Rather, the State was required to show that somehow independent expenditures in Montana operate differently than independent expenditures operate elsewhere. But the Montana Supreme Court recited the foreclosure of this issue in *Citizens United* and then acted as if the issue remained open—refusing to follow the holding of this Court. And in attempting to justify this refusal, it omitted clearly controlling language from what it quoted. It said: "However, if elected officials do succumb to improper influences from independent expenditures, 'then surely there is cause for concern.'" App.9a (*quoting Citizens United*, 130 S.Ct. at 911). But while *Citizens United* used the quoted words, this Court immediately provided the following words (which control):

> The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that more speech, not less, is the governing rule. *An outright ban on corporate political speech during the critical preelection period is not a permissible remedy*. Here Congress has created categorical bans on speech that are asymmetrical to preventing quid pro quo corruption.

130 S.Ct. at 911 (emphasis added). The state court omitted these words intentionally, not inadvertently, because Justice Nelson expressly called the emphasized words to the majority's attention. App.63-64a.

Citizens United also expressly foreclosed broad theories of corruption as legitimate interests to limit corporate independent expenditures, limiting cognizable corruption to quid-pro-quo corruption. 130 S.Ct. at 909. In the process, it rejected other theories of corruption, including antidistortion, leveling the playing field, gratitude, access, circumvention, and shareholder-protection. *Id.* at 905-12. The Montana Supreme Court recited broad theories of corruption, including problems with *contributions*, not at issue here, even though dissenting Justice Nelson again pointed the majority to this Court's restriction of theories of corruption, in *Citizens United*, to the quid-pro-quo-corruption risk. App.63a.

b. Encouraging Voter Participation.

The Montana Supreme Court next recited "an interest in encouraging the full participation of the Montana electorate" as supporting the Ban, App.23a, based on the notion that if corporations are allowed to make independent expenditures, "the average citizen candidate would be unable to compete against the corporate-sponsored candidate, and Montana citizens . . . would be effectively shut out of the process." App.23-24a. Not only is this asserted interest *not* cognizable quid-pro-quo corruption, it *is* a noncognizable level-the-playing-field interest that this Court rejected in *Buckley*, 424 U.S. at 48, in *Citizens United*, 130 S.Ct. at 904, and in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806, 2825-26 (2011). And the state court majority knew this because dissenting Justice Nelson told them so. App.65a.

c. Protecting and Preserving a System of Elected Judges.

The Montana Supreme Court next recited "a compelling interest in protecting and preserving its system of elected judges" and "a concomitant interest in preserving the appearance of judicial propriety and independence so as to maintain the public's trust and confidence." App.24a. Judges are clearly elected in Montana, and protecting the judicial system is vitally important. But Montana's argument supporting the Ban in this context is a rehash of interests already rejected—anti-distortion and equalizing interests. *See* App.24a. And Justice Stevens raised concerns about corporate and union independent expenditures in judicial elections, *Citizens United*, 130 S.Ct. at 968 (Stevens, J., dissenting), but this Court made no exception for judicial elections, nor any indication that the question remained open. In any event, silencing speakers is not a permissible remedy for any perceived problems. *Id.* at 911.

The state court quoted *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2266-67 (2009), for the proposition that "'Judicial integrity is . . . a state interest of the highest order.'" App.25a. But in *Citizens United*, this Court expressly addressed *Caperton* and held that it did not change the fact that corporations have a constitutional right to make independent expenditures. 130 S.Ct. at 910 ("*Caperton*'s holding was limited to the rule that the judge must be recused, not that the litigant's political speech could be banned.").

Moreover, this Court already addressed judicial elections in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). *White* held that "the notion that the special context of electioneering justifies an abridgment of the right to speak out on disputed issues sets our First Amendment jurisprudence on its head." *Id.* at 781. "If the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the participants in that process . . . the First Amendment rights that attach to their roles." *Id.* at 787-88. *See also id.* at 794-95 (Kennedy, J., concurring) ("What [a state] may not do . . . is censor what the people hear as they undertake to decide . . . . The State cannot opt for an elected judiciary and then assert that its democracy, in order to work as desired, compels the abridgment of speech.").

Again the state court majority knew these things because dissenting Justice Nelson told them so in great detail, App.66-72a, including the following statement:

> I do not believe the Supreme Court will allow a single state to single out corporations as a group and prohibit them from speaking in judicial elections. First of all, . . . the First Amendment prohibits "restrictions distinguishing among different speakers, allowing speech by some but not by others." *Citizens United*, 130 S.Ct. at 898. More to the point, "the First Amendment does not allow political speech restrictions based on a speaker's corporate identity." [*Id.*] at 903.

App.66a.

To summarize Part I.A, the decision below conflicts with this Court's decision in *Citizens United*. The Montana Supreme Court's analysis is flawed at every

vital analytical point. At every point, the dissent plainly showed the majority members their error, based on *Citizens United* and *White*. For this reason, the dissent declared that these five state justices simply refused to follow this Court and to abide by their oaths to support the U.S. Constitution, as interpreted by this Court. As Justice Powell wrote in granting a stay of a preliminary injunction in a school-prayer case, "Unless and until this Court reconsiders the foregoing decisions, they appear to control this case. . . . [T]he [lower court] was obligated to follow them." *Jaffree v. Board of School Commissioners of Mobile County*, 459 U.S. 1314, 1316 (1983) (Powell, Circuit Justice). The stay should be granted or, in the alternative, this Court should treat this stay request as a petition for certiorari, grant the petition, and summarily reverse.

B. The Decision Below Creates Splits with Federal Circuit Courts.

The Montana Supreme Court's decision creates circuit splits on controlling analytical issues in this case—that (1) only quid-pro-quo corruption can justify restricting core political speech and (2) independent expenditures pose no such cognizable corruption risk—with the Fourth, Seventh, Ninth, and D.C. Circuits.[3]

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[3] *See North Carolina Right to Life v. Leake*, 525 F.3d 274, 212-93 (4th Cir. 2008); *Wisconsin Right to Life State PAC v. Barland*, 664 F.3d 139, 153-54 (7th Cir. 2011); *Long Beach Chamber of Commerce v. Long Beach*, 603 F.3d 684, 694-98 (9th Cir. 2010); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1118-19 (9th Cir. 2011); *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010); *EMILY's List v. FEC*, 581 F.3d 1, 11 (D.C. Cir. 2009). *Accord Republican Party of New Mexico v. King*, 11-CV-900 WJ/KBM, 2012 WL 219422, *7 (D. N.M. Jan. 5, 2012); *Yamada v. Kuramoto*, 744 F. Supp. 2d 1075 (D. Haw. 2010); South Carolina State Ethics Commission, SEC AO2011-004. Moreover, as Justice

If, as these Circuits (and *Citizens United*) hold, only quid-pro-quo corruption may be considered and independent expenditures pose no cognizable corruption risk, then independent expenditures by corporations cannot constitutionally be prohibited as a matter of law. These federal appellate courts simply followed *Citizens United* as precedent without trying to artificially distinguish it, as the Montana Supreme Court attempted. The federal courts understood that *Citizens United* held *as a matter of law* that independent expenditures posed no cognizable quid-pro-quo-corruption risk. The D.C. Circuit in *Speechnow.org* held that *Citizens United* held "*as a matter of law* that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption." 599 F.3d at 692 (emphasis added). The Ninth Circuit cited *Speechnow.org* for this "as a matter of law" proposition, *Long Beach*, 603 F.3d at 698, as did the Seventh Circuit, *Barland*, 664 F.3d at 153-54. The Seventh Circuit said that there was a "*categorical* holding in *Citizens United* that independent expenditures do not corrupt." *Id.* at 155. The stay should be granted or, in the alternative, this Court should treat this stay request as a petition for certiorari, grant the petition and summarily reverse.

Nelson noted in dissent below, "'[I]n 17 of the 24 states with laws affected by *Citizens United* decision, legislation has been introduced to amend the law.'" App.42a n.4 (citation omitted).

C. This Case Presents an Important Federal Question.

This is a case of great public importance. It involves the suppression of core political speech protected by the First Amendment. It involves a recent resolution by this Court of a longstanding issue concerning when political speech may be restricted and on what basis. It involves respect for the Constitution, the rule of law, and decisions of this Court. If Montana is allowed to flout this Court's holdings in *Citizens United* in such a willful and transparent fashion, respect for the Constitution, the rule of law, and this Court will be eroded. More states will likely try to carve out exceptions based on their own allegedly unique circumstances. *See, e.g.*, Jon Hinck, *Maine Bill Would Challenge Citizens United Ruling*, http:// www.huffingtonpost.com/jon-hinck/maine-bill-would-challeng_b_1228186.html (author introduced bill to follow Montana Supreme Court). If that happens, there will be the "case-by-case determinations" that this Court rejected where "archetypical political speech would be chilled in the meantime." *Citizens United*, 130 S.Ct. at 892.

To summarize Part I, the decision below conflicts with this Court's holding in *Citizens United* and creates splits with federal courts of appeal that have followed *Citizens United* on an important federal question. Thus, there is more than a "reasonable probability" that four Justices will vote to grant certiorari and more than a "fair prospect" that the Corporations will prevail on the merits.

Rostker, 448 U.S. at 1308. Rather, the Corporations have a *strong* likelihood of success on the merits.

II. The Corporations Have Irreparable Harm.

In free-speech cases, irreparable harm, the balance of harms, and the public interest follow the likelihood of success on the merits. Likely success means there is likely a First Amendment right at issue. And there is always irreparable harm when First Amendment rights are violated. *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") "Given that First Amendment rights are at stake, the likelihood of irreparable harm is presumed." *Yamada*, 744 F. Supp. 2d at 1085 (*citing Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (*quoting Elrod*)) (granting preliminary injunction allowing plaintiffs to make unlimited contributions to a PAC making only independent expenditures). *See also Thalheimer*, 645 F.3d at 1128 (same). So the fact that the Corporations are banned from making independent expenditures from general corporate funds is irreparable harm.

III. The Balance of Harms and Public Interest Favor the Corporations.

Justice Brennan included "balanc[ing] the equities" in the stay standards, but only "in a close case." *Rostker*, 448 U.S. at 1308. This is not a close case, but the balance favors the Corporations. The Corporations want to do what this Court held that Citizens United may do under the First Amendment, i.e., make

independent expenditures from general corporate funds. Under a stay, Montana would be barred from preventing this while the Court considers this case. Montana has no cognizable interest in enforcing such a likely unconstitutional ban. *Citizens United* considered and dismissed the interests asserted in Montana as supporting this ban. And there can be no great burden on Montana if its citizens can do what is allowed to corporations in all other states.

Moreover, "the court must consider the 'significant public interest' in upholding free speech principles." *Yamada*, 744 F. Supp. 2d at 1086 (citation omitted; collecting Ninth Circuit authorities). This is especially important in the face of the Montana Supreme Court's rejection of the free-speech principles articulated in *Citizens United*. It is important to assure that this burden on free speech is lifted as soon as possible, does not recur, and is never imposed on other corporations or unions.

The public interest is also served by assuring that Montana cannot impose further litigation burdens, now or in the future, on those wanting to defend these speech rights that are clearly protected by the First Amendment. For asserting their right to make independent expenditures as corporations now may do nationwide, the Corporations have had to endure the burdens of discovery, litigation, and appeal—which might well chill many who want to speak but do not want to face such intrusion and expense for asserting their rights. These burdens on free-speech rights are a problem that this Court identified and

sought to limit in *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 468 n.5 (2007) (Roberts, C.J., joined by Alito, J.)[4] ("*WRTL-II*") ("Such litigation constitutes a severe burden on political speech."),[5] and decried in *Citizens United*, 130 S.Ct. at 896 (substantial burden of case-by-case litigation chills speakers).

And the public interest is also served by discouraging Montana from engaging in what Judge Noonan called "petty bureaucratic harassment," *Unsworth*, 556 F.3d at 1037 (Noonan, J., concurring). In the present case, the penchant for this may be seen in the Montana Commissioner's decision to enforce the Ban despite *Citizens United* and the State's decision to appeal the trial court's holding that *Citizens United* made the Ban unconstitutional. The penchant may also be seen in the State's effort to smear WTP. The trial court correctly dismissed this effort as irrelevant as follows:

> The State then attempts to portray WTP as an unsavory entity up to no good. That may or may not be the case, but it is clear to this Court that [the Ban] applies to WTP. Whatever one might think of WTP, this Court does not have the power to take away its First Amendment right to support or oppose political candidates of its choice.

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[4] This controlling opinion states the holding. *See Marks v. United States*, 430 U.S. 188, 193 (1977).

[5] *See also WRTL-II*, 551 U.S. at 469 ("[A]s-applied challenge . . . . must entail minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation. . . . And it must eschew 'the open-ended rough-and-tumble of factors,' which 'invit[es] complex argument in a trial court and a virtually inevitable appeal.'" (citations omitted)).

App.89-90a. The State's smear effort in this respect may be seen in the filing of a supplemental affidavit from then-Commissioner Unsworth (Doc. 63), which the Corporations moved to strike on the basis that it was irrelevant to the issue, beyond the time for summary judgment affidavits, contained hearsay, etc. (Docs. 67, 72). The trial court struck the affidavit from the record (Doc. 76), and dismissed the smear effort as irrelevant in its summary-judgment Order, as noted above. Nonetheless, because the State continued to push the smear effort in its appellate briefing, and because the Montana Supreme Court uncritically joined in the smear effort, it is useful to see to what extent the public interest will be served by stopping such tactics. As discussed at some length next, the smear effort was based on a flawed understanding of this Court's constitutional holdings regarding the right to freely engage in core political speech.

Commissioner Unsworth's affidavit was self-serving in that its main exhibit (Exhibit A) consisted of his own lengthy Summary of Facts and Statement of Findings in *In the Matter of the Complaint Against Western Tradition Partnership and Coalition for Energy and the Environment*, Before the Commissioner of Political Practices (Oct. 21, 2010) ("Unsworth Affidavit") (Doc. 63, Ex. A). There he concluded that

> WTP's failure to register as a political committee and publicly disclose the true source and disposition of funds it used to oppose candidates for the Montana Legislature frustrates the purpose of Montana's Campaign Finances and Practices Act raises the specter of corruption of the electoral process and clearly justifies an action seeking a civil penalty.

Id. at 42. But his conclusion that WTP should have registered and reported as a PAC was based on a fundamental misunderstanding of this Court's "express advocacy" test.

The express-advocacy test comes into play because Montana's disclosure and PAC-status laws are triggered by express-advocacy communications. As Commissioner Unsworth noted, "Montana's administrative rules do not define the phrase 'expressly advocating,' thus, it is appropriate to look to federal case law to ensure that enforcement of Montana's law is consistent with constitutional principles." *Unsworth Affidavit* at 29. Unsworth proceeded to note the creation of the express-advocacy test in *Buckley*, 424 U.S. at 44 & n.52, and *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986) ("*MCFL*"). *Unsworth Affidavit* at 30. As is clear from the cited passages, both *Buckley* and *MCFL* required a "magic words" definition of express advocacy.

This Court still requires a magic-words test for express advocacy. *McConnell v. FEC*, 540 U.S. 93 (2003), repeatedly equated "express advocacy" with "magic words." *See id*. at 126, 191-93, 217-19. So *McConnell*'s "functionally meaningless" statement about the express-advocacy line, *id*. at 193, did not *eliminate* "express advocacy" as a category of regulated speech requiring "magic words." Rather, *McConnell* used that analysis to *add* regulation of "electioneering communications" to regulation of magic-words express advocacy. In *WRTL-II*, 551 U.S. 449, all members of the Court equated "express advocacy" with "magic

words." *See id.* at 474 n.7 (Alito, C.J., joined by Alito, J.), 495 (Scalia, J., joined by Kennedy & Thomas, JJ., concurring in part and concurring in judgment), 513 (Souter, J., joined by Stevens, Ginsburg, & Breyer, JJ., dissenting). In *Citizens United*, the concurrence and dissent made clear that all members of the Court still require magic words for a communication to be deemed express advocacy: "If there was ever any significant uncertainty about what counts as the functional equivalent of express advocacy, *there has been little doubt about what counts as express advocacy since the 'magic words' test* of *Buckley* . . . ." 130 S.Ct. at 935 n.8 (Stevens, J., joined by Ginsburg, Breyer & Sotomayor, JJ., concurring in part and dissenting in part) (emphasis added). *See also id.* at 956 (equating express advocacy with "magic words").

While the Federal Election Commission ("FEC") has a non-magic-words, alternate express-advocacy definition, *see* 11 C.F.R. 100.22(b), this does not help Unsworth. First, it is not identical to *WRTL-II*'s appeal-to-vote test on which Unsworth relied. Second, the FEC's alternate definition has been challenged before this Court and held unconstitutional by other courts, as discussed next.

The FEC's alternate definition has been challenged in this Court, which granted certiorari, vacated a decision upholding the definition, and remanded for reconsideration in light of *Citizens United*. *See Real Truth About Obama, Inc. v. FEC*, 130 S.Ct. 2371 (2010) (oral argument in the Fourth Circuit is set for March 21, 2012).

The FEC's definition has been held unconstitutional. The Fourth Circuit held it unconstitutional for not requiring magic words. *Virginia Society for Human Life v. FEC*, 263 F.3d 379, 329 (4th Cir. 2001).[6]

Fourth Circuit decisions have also held that express advocacy requires magic words, which precludes the FEC alternate express-advocacy test. *See Leake*, 525 F.3d at 283 (requires "specific election-related words"); *FEC v. Christian Action Network*, 110 F.3d 1049, 1062 (4th Cir. 1997). Other circuits have held that express advocacy is a magic-words test. *See Faucher v. FEC*, 928 F.2d 468, 470 (1st Cir. 1991); *FEC v. Central Long Island Tax Reform,* 616 F.2d 45, 53 (2d Cir.1980); *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 664-65 (5th Cir. 2006); *Anderson v. Spear*, 356 F.3d 651, 664 (6th Cir. 2004); *Brownsburg Area Patrons Affecting Change v. Baldwin*, 137 F.3d 503, 506 (7th Cir. 1998); *Iowa Right to Life Committee v. Williams*, 187 F.3d 963, 969 (8th Cir. 1999) (striking definition patterned on 11 C.F.R. § 100.22(b)); *California Pro-Life Council v. Getman*, 328 F.3d 1088, 1098 (9th Cir. 2003)[7].[8]

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[6] The challenged provision was also held unconstitutional by *Right to Life of Duchess County v. FEC*, 6 F. Supp. 2d 248, 253-54 (S.D. N.Y. 1998), for not employing magic words.

[7] This decision recognized that even *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), on which the FEC relies for the challenged regulation, "presumed express advocacy must contain some explicit *words* of advocacy." *See also American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 985 (9th Cir. 2004) ("'*McConnell* left intact the ability of courts to make distinctions between express advocacy and issue advocacy, where such distinctions are necessary to cure vagueness and over-breadth in statutes which regulate more speech than that for which the legislature has established a significant governmental interest'"

Despite this body of authority striking down a non-magic-words express advocacy test and establishing that express advocacy requires magic words, Commissioner Unsworth asserted that express advocacy does not require magic words. He argued that *WRTL-II*, 551 U.S. at 470-71, created a new express-advocacy test. *Unsworth Affidavit* at 34. This is clearly erroneous.

But *WRTL-II* created an appeal-to-vote test to limit the scope of the federal ban on corporate *electioneering communications*, not *independent expenditures*. Though the test no longer functions after *Citizens United* declared the corporate ban unconstitutional, it was designed to identify electioneering communications that were the "functional equivalent of express advocacy." *WRTL-II*, 551 U.S. at 470-71 (Roberts, C.J., joined by Alito, J.). The "functional equivalent of express advocacy" is, by definition and logic, not a *kind* of express advocacy, so the appeal-to-vote test is not an express-advocacy test.

Moreover, a majority of this Court indicated in *WRTL-II* that the appeal-to-vote test is unconstitutionally vague apart from the electioneering-communication definition. *Compare id.* at 474 n.7 (Roberts, C.J., joined by Alito, J.) (test not unconstitutionally vague because, inter alia, "this test is only triggered if the speech meets the brightline requirements of [the electioneering-communications

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(citation omitted)).

[8] State supreme courts have also held that "express advocacy" requires "magic words." *See Brownsburg Area Patrons Affecting Change v. Baldwin*, 714 N.E. 2d 135 (Ind. 1999); *Osterberg v. Peca*, 12 S.W. 3d 31 (Tex. 2000).

definition] in the first place) *with id.* at 492-95 (Scalia, J., joined by Kennedy & Thomas, JJ., concurring in part and concurring in the judgment) (test is unconstitutionally vague). Thus, the test is not, and cannot be, a free-floating test.

It is not "an objective test for express advocacy," as Unsworth argued. *Unsworth Affidavit* at 34. Thus, when Unsworth said of one of the ads that "[a]pplying the objective test for express advocacy, the only reasonable interpretation of the three Who's Pulling the Strings ads is as an appeal to vote against the named candidates," *Unsworth Affidavit* at 37, he can point to no magic-words express advocacy. So it was *not* express advocacy.

Because he used the wrong test, Unsworth's determinations that cited ads were express advocacy were wrong. Consequently, the laws and rules governing disclosure and PAC-status that apply to express-advocacy communications and the groups making them did not apply to the ads at issue and to WTP. As a result, WTP did not have to register and report as if it were a PAC. It was not shady for not doing what it is what not required to do. And the fact that WTP challenges Montana campaign-finance laws as unconstitutional does not make it shady either. Thus, the Montana Supreme Court's uncritical acceptance of this smear campaign was improper because it was irrelevant to the issue of the case and flawed at is foundation. *See, e.g.* App.7-8a, 12-13a.

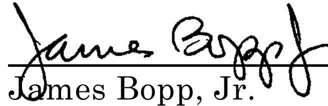
But the fact that the State would argue, and state-court judges would recite, such irrelevant material at all shows that there is a problem in Montana. It is

not with long-gone Anaconda. It is a problem with respect for the First Amendment, the rule of law, and decisions of this Court on the part of the State and the Montana Supreme Court. Therefore, it is in the public interest to decisively put an end to this by providing the relief requested herein.

Conclusion

For the foregoing reasons, the requested stay should granted, or, in the alternative, this application should be treated as a petition for a writ of certiorari, certiorari should be granted, and the Montana Supreme Court should be summarily reversed.

Respectfully submitted,



James Bopp, Jr.
Counsel of Record
Richard E. Coleson
Noel H. Johnson
THE BOPP LAW FIRM
1 South Sixth Street
Terre Haute, Ind. 47807
812/232-2434
812/235-3685 (facsimile)
jboppjr@aol.com
Lead Counsel for Petitioners

Margot E. Barg
WITTICH LAW FIRM, P.C.
602 Ferguson, Suite 5
Bozeman, MT 59718
406/585-5598
406/585-2811 (facsimile
Local Counsel for Petitioners

No. 11-A________

In the Supreme Court of the United States

American Tradition Partnership, Inc., Champion Painting, Inc., and **Montana Shooting Sports Association, Inc.**, *Petitioners*

v.

Attorney General of the State of Montana, and **Commissioner of the Commission for Political Practices**, *Respondents*

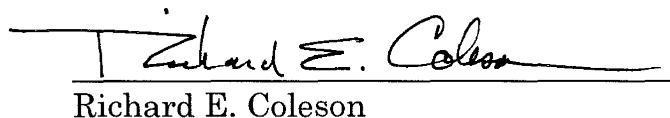
On Petition for a Writ of Certiorari to the Supreme Court of the State of Montana

Certificate of Service

I, Richard E. Coleson, a member of the bar of this court, certify that on February 9, 2012, I served a copy of the *Application to Stay Montana Supreme Court Decision Pending Certiorari* on the listed counsel of record by Federal Express Priority Overnight, that a courtesy PDF copy was sent to the listed email address, and that all persons required to be served have been served:

Steve Bullock
Montana Attorney General
James P. Molloy
215 North Sanders
Helena, MT 59620
(406) 444-2026
JMolloy@mt.gov
Counsel for Respondents

Executed February 9, 2012



Richard E. Coleson

No. 11-A________

In the Supreme Court of the United States

American Tradition Partnership, Inc., **Champion Painting, Inc.**, and **Montana Shooting Sports Association, Inc.**, *Petitioners*

v.

Attorney General of the State of Montana, and **Commissioner of the Commission for Political Practices**, *Respondents*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Montana

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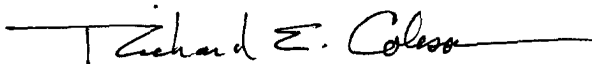
Certificate of Compliance

Because Petitioners request that their *Application to Stay Montana Supreme Court Decision Pending Certiorari* be considered as a petition for a writ of certiorari, they provide this certificate. As required by Supreme Court Rule 33.1(h), I, Richard E. Coleson, a member of the bar of this Court, certify that the *Application* contains 8,763 words, excluding only the cover, table of contents, table of authorities, list of counsel at the end of the document, and appendix.

Executed February 9, 2012



Richard E. Coleson