Federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an “electioneering communication” or for speech expressly advocating the election or defeat of a candidate. Limits on electioneering communications were upheld in *McConnell v. Federal Election Comm.* (2003). The holding of *McConnell* rested to a large extent on an earlier case, *Austin v. Michigan Chamber of Commerce* (1990), that held that political speech may be banned based on the speaker’s corporate identity.

In this case we are asked to reconsider *Austin* and, in effect, *McConnell*. It has been noted that “*Austin* was a significant departure from ancient *First Amendment* principles.” We agree with that conclusion and hold that *stare decisis* does not compel the continued acceptance of *Austin*. The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether. We turn to the case now before us.

I

A

Citizens United is a nonprofit corporation . . . [with] an annual budget of about $12 million. Most of its funds are from donations by individuals; but, in addition, it accepts a small portion of its funds from for-profit corporations.

In January 2008, Citizens United released a film entitled *Hillary: The Movie*. It is a 90-minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party 2008 Presidential primary elections. *Hillary* mentions Senator Clinton by name and depicts interviews with political
Senator Clinton. *Hillary* was released in theaters and on DVD, but Citizens United wanted to increase distribution by making it available through video-on-demand. . . . To implement the proposal, Citizens United was prepared to pay for the video-on-demand; and to promote the film, it produced two 10-second ads and one 30-second ad for *Hillary*. Each ad includes a short (and, in our view, pejorative) statement about Senator Clinton, followed by the name of the movie and its Website address. Citizens United desired to promote the video-on-demand offering by running advertisements on broadcast and cable television.

**B**

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited and still does prohibit corporations and unions from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. An electioneering communication is defined as “any broadcast, cable, or satellite communication [that] refers to a clearly identified candidate for Federal office” and is made within 30 days of a primary or 60 days of a general election. The Federal Election Commission (FEC) regulations further define an electioneering communication as a communication that is “publicly distributed” to mean that the communication “can be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days.” Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a separate segregated fund (known as a political action committee, or PAC) for these purposes. The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union.

**C**

Citizens United wanted to make *Hillary* available through video-on-demand within 30 days of the 2008 primary elections. It feared, however, that both the film and the ads would be covered by §441b’s ban on corporate-funded independent expenditures, thus subjecting the corporation to civil and criminal penalties under §437g. In December 2007, Citizens United sought declaratory and injunctive relief against the FEC. It argued that (1) §441b is unconstitutional as applied to *Hillary*; and (2) BCRA’s disclaimer and disclosure
requirements, are unconstitutional as applied to *Hillary* and to the three ads for the movie.

II

Before considering whether *Austin* should be overruled, we first address whether Citizens United’s claim that §441b cannot be applied to *Hillary* may be resolved on other, narrower grounds.

A

Citizens United contends that §441b does not cover *Hillary*, as a matter of statutory interpretation, because the film does not qualify as an “electioneering communication.” Under the definition of electioneering communication, the video-on-demand showing of *Hillary* on cable television would have been a “cable . . . communication” that “referred to a clearly identified candidate for Federal office” and that was made within 30 days of a primary election. Citizens United, however, argues that *Hillary* was not “publicly distributed,” because a single video-on-demand transmission is sent only to a requesting cable converter box and each separate transmission, in most instances, will be seen by just one household—not 50,000 or more persons.

This argument ignores the regulation’s instruction on how to determine whether a cable transmission “can be received by 50,000 or more persons.” The regulation provides that the number of people who can receive a cable transmission is determined by the number of cable subscribers in the relevant area. Here, Citizens United wanted to use a cable video-on-demand system that had 34.5 million subscribers nationwide. Thus, *Hillary* could have been received by 50,000 persons or more.

In our view the statute cannot be saved by limiting the reach of [the law] through this suggested interpretation. In addition to the costs and burdens of litigation, this result would require a calculation as to the number of people a particular communication is likely to reach, with an inaccurate estimate potentially subjecting the speaker to criminal sanctions. The *First Amendment* does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolonged laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess
Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation. Section 441b covers Hillary.

B

Citizens United next argues that §441b may not be applied to Hillary under the approach taken in Wisconsin Right to Life (WRTL). McConnell decided that §441b(b)(2)’s definition of an “electioneering communication” was facially constitutional insofar as it restricted speech that was “the functional equivalent of express advocacy” for or against a specific candidate. WRTL then found an unconstitutional application of §441b where the speech was not “express advocacy or its functional equivalent.” The functional-equivalent test is objective: “a court should find that [a communication] is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”

Under this test, Hillary is equivalent to express advocacy. The movie, in essence, is a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President. In light of historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of Senator Clinton’s character and her fitness for the office of the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency. . . Citizens United argues that Hillary is just “a documentary film that examines certain historical events.” We disagree. The movie’s consistent emphasis is on the relevance of these events to Senator Clinton’s candidacy for President. As the District Court found, there is no reasonable interpretation of Hillary other than as an appeal to vote against Senator Clinton. Under the standard stated in McConnell and further elaborated in WRTL, the film qualifies as the functional equivalent of express advocacy.

C

Citizens United further contends that §441b should be invalidated as applied to movies shown through video-on-demand, arguing that this delivery system has a lower risk of distorting the political process than do television ads. While some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be
raise questions as to the courts’ own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored.

Courts, too, are bound by the First Amendment. We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker. It must be noted, moreover, that this undertaking would require substantial litigation over an extended time, all to interpret a law that beyond doubt discloses serious First Amendment flaws. The interpretive process itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable. First Amendment standards, however, “must give the benefit of any doubt to protecting rather than stifling speech.”

E

As the foregoing analysis confirms, the Court cannot resolve this case on a narrower ground without chilling political speech, speech that is central to the meaning and purpose of the First Amendment. It is not judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications. Indeed, a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling. Here, the lack of a valid basis for an alternative ruling requires full consideration of the continuing effect of the speech suppression upheld in Austin.

Throughout the litigation, Citizens United has asserted a claim that the FEC has violated its First Amendment right to free speech. All concede that this claim is properly before us. And once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. Citizens United’s argument that Austin should be overruled is not a new claim. Rather, it is at most a new argument to support what has been a consistent claim: that the FEC did not accord Citizens United the rights it was obliged to provide by the First Amendment.

III

The First Amendment provides that “Congress shall make no law... abridging the freedom of speech.” Laws enacted to control or suppress speech may operate at different points in the speech process. The law before us is an outright ban, backed
corporations “including nonprofit advocacy corporations” either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under §441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U. S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate’s defense of free speech. These prohibitions are classic examples of censorship.

Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak. A PAC is a separate association from the corporation. So the PAC exemption from §441b’s expenditure ban does not allow corporations to speak. Even 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 §441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days.

And that is just the beginning. PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur. . . PACs have to comply with these regulations just to speak. This might explain why fewer than 2,000 of the millions of corporations in this country have PACs. PACs, furthermore, must exist before they can speak. Given the onerous restrictions, a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign.

Section 441b’s prohibition on corporate independent expenditures is thus a ban on speech. As a “restriction on the amount of money a person or group can spend on political communication during a campaign,” that statute “necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” Were the Court to uphold these restrictions, the Government could repress speech by silencing
If §441b applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment “has its fullest and most urgent application to speech uttered during a campaign for political office.”

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. 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.” While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter, the quoted language from WRTL provides a sufficient framework for protecting the relevant First Amendment interests in this case. We shall employ it here.

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

The Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons, but these rulings were based on an interest in allowing governmental entities to perform their functions. The corporate independent expenditures at issue in this case, however, would not interfere
These precedents stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech. By contrast, it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes. At least before Austin, the Court had not allowed the exclusion of a class of speakers from the general public dialogue.

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

The Court has recognized that First Amendment protection extends to corporations. This protection has been extended by explicit holdings to the context of political speech. Under the rationale of these precedents, political speech does not lose First Amendment protection simply because its source is a corporation. The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not “natural persons.”

At least since the latter part of the 19th century, the laws of some States and of the United States imposed a ban on corporate direct contributions to candidates. Yet not until 1947 did Congress first prohibit independent expenditures by corporations and labor unions in §304 of the Labor Management Relations Act 1947. In passing this Act Congress overrode the veto of President Truman, who warned that the expenditure ban was a “dangerous intrusion on free speech.”

For almost three decades thereafter, the Court did not reach the question whether restrictions on corporate and union expenditures are constitutional. In United States v. Automobile Workers (1957), the Court again encountered the independent expenditure ban. After holding only that a union television broadcast that endorsed candidates was covered by the statute, the Court refused to anticipate constitutional questions and remanded for the trial to proceed. Three Justices dissented, arguing that the Court should have reached the constitutional question and that the ban on independent expenditures was unconstitutional. The dissent concluded that deeming a particular group “too powerful” was not a justification for
withholding First Amendment rights from any group--labor or corporate.

[The Court then reviewed the history of cases it had decided dealing with campaign finance laws from Buckley to Austin]

B

The Court is thus confronted with conflicting lines of precedent: a pre- Austin line that forbids restrictions on political speech based on the speaker’s corporate identity and a post- Austin line that permits them. No case before Austin had held that Congress could prohibit independent expenditures for political speech based on the speaker’s corporate identity. Before Austin Congress had enacted legislation for this purpose, and the Government urged the same proposition before this Court. [At no time] did the Court adopt the proposition.

1

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. If the antidistortion rationale were to be accepted, however, it would permit Government to ban political speech simply because the speaker is an association that has taken on the corporate form. The Government contends that Austin permits it to ban corporate expenditures for almost all forms of communication stemming from a corporation. If Austin were correct, the Government could prohibit a corporation from expressing political views in media beyond those presented here, such as by printing books. The Government responds that the FEC has never applied this statute to a book, and if it did, there would be quite [a] good as-applied challenge. This troubling assertion of brooding governmental power cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.

Political speech is “indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.” This protection for speech is inconsistent with Austin’s antidistortion rationale. Austin sought to defend the antidistortion rationale as a means to prevent corporations from obtaining an unfair advantage in the political marketplace by using resources amassed in the economic marketplace. But Buckley rejected the premise that the Government has an interest in equalizing the relative ability of individuals and groups to influence the outcome of elections. Buckley was specific in stating that the skyrocketing cost of
prohibition. The First Amendment’s protections do not depend on the speaker’s financial ability to engage in public discussion.

The Court reaffirmed these conclusions when it invalidated the BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election. The Constitution, however, confers upon voters, not Congress, the power to choose the Members of the House of Representatives, and it is a dangerous business for Congress to use the election laws to influence the voters’ choices. The rule that political speech cannot be limited based on a speaker’s wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity. . . .

It is irrelevant for purposes of the First Amendment that corporate funds may have little or no correlation to the public’s support for the corporation’s political ideas. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker’s ideas.

Austin’s antidistortion rationale would produce the dangerous, and unacceptable, consequence that Congress could ban political speech of media corporations. Yet media corporations accumulate wealth with the help of the corporate form, the largest media corporations have immense aggregations of wealth, and the views expressed by media corporations often have little or no correlation to the public’s support for those views. Thus, under the Government’s reasoning, wealthy media corporations could have their voices diminished to put them on par with other media entities. There is no precedent for permitting this under the First Amendment.

The media exemption discloses further difficulties with the law now under consideration. The law’s exception for media corporations is, on its own terms, all but an admission of the invalidity of the antidistortion rationale. And the exemption results in a further, separate reason for finding this law invalid: Again by its own terms, the law exempts some corporations but covers others, even though both have the need or the motive to communicate their views. The exemption applies to media corporations owned or controlled by corporations that have
other than news. So even assuming the most doubtful proposition that a news organization has a right to speak when others do not, the exemption would allow a conglomerate that owns both a media business and an unrelated business to influence or control the media in order to advance its overall business interest. At the same time, some other corporation, with an identical business interest but no media outlet in its ownership structure, would be forbidden to speak or inform the public about the same issue. This differential treatment cannot be squared with the First Amendment. . . .

The censorship we now confront is vast in its reach. The Government has muffled the voices that best represent the most significant segments of the economy. And the electorate has been deprived of information, knowledge and opinion vital to its function. By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of destroying the liberty of some factions is worse than the disease. The Federalist No. 10. Factions should be checked by permitting them all to speak, and by entrusting the people to judge what is true and what is false.

The purpose and effect of this law is to prevent corporations, including small and nonprofit corporations, from presenting both facts and opinions to the public. This makes Austin’s antidistortion rationale all the more an aberration. The First Amendment protects the right of corporations to petition legislative and administrative bodies. Corporate executives and employees counsel Members of Congress and Presidential administrations on many issues, as a matter of routine and often in private. An amici brief filed on behalf of Montana and 25 other States notes that lobbying and corporate communications with elected officials occur on a regular basis. When that phenomenon is coupled with §441b, the result is that smaller or nonprofit corporations cannot raise a voice to object when other corporations, including those with vast wealth, are cooperating with the Government. That cooperation may sometimes be voluntary, or it may be at the demand of a Government official who uses his or her authority, influence, and power to threaten corporations to support the Government’s policies. Those kinds of interactions are often unknown and unseen. The speech that §441b forbids, though, is public, and all can judge its content and purpose. References to massive corporate treasuries should not mask the real operation of this law. Rhetoric ought not obscure reality. . . .
When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

What we have said also shows the invalidity of other arguments made by the Government. For the most part relinquishing the antidistortion rationale, the Government falls back on the argument that corporate political speech can be banned in order to prevent corruption or its appearance. In Buckley, the Court found this interest sufficiently important to allow limits on contributions but did not extend that reasoning to expenditure limits. When Buckley examined an expenditure ban, it found that the governmental interest in preventing corruption and the appearance of corruption was inadequate to justify the ban on independent expenditures.

A single footnote in Bellotti purported to leave open the possibility that corporate independent expenditures could be shown to cause corruption. 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. Dicta in Bellotti’s footnote suggested that a corporation’s right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office. Bellotti surmised that Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections. Buckley, however, struck down a ban on independent expenditures to support candidates that covered corporations, and explained that the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.

When Buckley identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to quid pro quo corruption. The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt. “Favoritism and influence are not ... avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate
contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness.” 

McConnell, (opinion of Kennedy, J).

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials. This is inconsistent with any suggestion that the electorate will refuse to take part in democratic governance because of additional political speech made by a corporation or any other speaker.

The McConnell record was over 100,000 pages long, yet it does not have any direct examples of votes being exchanged for expenditures. This confirms Buckley’s reasoning that independent expenditures do not lead to, or create the appearance of, quid pro quo corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption. The BCRA record establishes that certain donations to political parties, called soft money, were made to gain access to elected officials. This case, however, is about independent expenditures, not soft money. When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. 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 pre-election period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing quid pro quo corruption.

The Government contends further that corporate independent expenditures can be limited because of its interest in protecting
political speech. This asserted interest, like Austin’s antidistortion rationale, would allow the Government to ban the political speech even of media corporations. Assume, for example, that a shareholder of a corporation that owns a newspaper disagrees with the political views the newspaper expresses. Under the Government’s view, that potential disagreement could give the Government the authority to restrict the media corporation’s political speech. The First Amendment does not allow that power. There is, furthermore, little evidence of abuse that cannot be corrected by shareholders through the procedures of corporate democracy.

Those reasons are sufficient to reject this shareholder-protection interest; and, moreover, the statute is both underinclusive and overinclusive. As to the first, if Congress had been seeking to protect dissenting shareholders, it would not have banned corporate speech in only certain media within 30 or 60 days before an election. A dissenting shareholder’s interests would be implicated by speech in any media at any time. As to the second, the statute is overinclusive because it covers all corporations, including nonprofit corporations and for-profit corporations with only single shareholders. As to other corporations, the remedy is not to restrict speech but to consider and explore other regulatory mechanisms. The regulatory mechanism here, based on speech, contravenes the First Amendment.

C

Our precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts us on a course that is sure error. Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned.

These considerations counsel in favor of rejecting Austin, which itself contravened this Court’s earlier precedents in Buckley and Bellotti. This Court has not hesitated to overrule decisions offensive to the First Amendment. Stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision.

For the reasons above, it must be concluded that Austin was not well reasoned . . . and has been undermined by experience since its announcement. Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws. Our Nation’s speech dynamic is changing, and informative voices should not have to circumvent onerous
have become adept at presenting citizens with sound bites, talking points, and scripted messages that dominate the 24-hour news cycle. Corporations, like individuals, do not have monolithic views. On certain topics corporations may possess valuable expertise, leaving them the best equipped to point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials. . . .

Due consideration leads to this conclusion: Austin should be and now is overruled. We return to the principle established in Buckley and Bellotti that the Government may not suppress political speech on the basis of the speaker’s corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.

D

Austin is overruled, so it provides no basis for allowing the Government to limit corporate independent expenditures. As the Government appears to concede, overruling Austin effectively invalidates not only BCRA Section 203, but also 2 U. S. C. 441b’s prohibition on the use of corporate treasury funds for express advocacy. Section 441b’s restrictions on corporate independent expenditures are therefore invalid and cannot be applied to Hillary.

Given our conclusion we are further required to overrule the part of McConnell that upheld BCRA §203’s extension of §441b’s restrictions on corporate independent expenditures. The McConnell Court relied on the antidistortion interest recognized in Austin to uphold a greater restriction on speech than the restriction upheld in Austin, and we have found this interest unconvincing and insufficient. This part of McConnell is now overruled.

IV

A

Citizens United next challenges BCRA’s disclaimer and disclosure provisions as applied to Hillary and the three advertisements for the movie. Under BCRA §311, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that “_______ is responsible for the content of this advertising.” The required statement must be made in a “clearly spoken manner,” and displayed on the screen in a “clearly readable manner” for at least four seconds. It must state that the communication “is not authorized by any candidate or candidate’s committee”. If must
also display the name and address (or Web site address) of the person or group that funded the advertisement. Any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC. That statement must identify the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors.

Disclaimer and disclosure requirements may burden the ability to speak, but they “impose no ceiling on campaign-related activities,” and “do not prevent anyone from speaking.” The Court has subjected these requirements to exacting scrutiny, which requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest

In Buckley, the Court explained that disclosure could be justified based on a governmental interest in “providing the electorate with information” about the sources of election-related spending. The McConnell Court applied this interest in rejecting facial challenges to BCRA §§201 and 311. There was evidence in the record that independent groups were running election-related advertisements “while hiding behind dubious and misleading names.” The Court therefore upheld BCRA §§201 and 311 on the ground that they would help citizens “make informed choices in the political marketplace.”

Although both provisions were facially upheld, the Court acknowledged that as-applied challenges would be available if a group could show a “reasonable probability” that disclosure of its contributors names will subject them to threats, harassment, or reprisals from either Government officials or private parties.

For the reasons stated below, we find the statute valid as applied to the ads for the movie and to the movie itself.

B

Citizens United argues that the disclaimer requirements in §311 are unconstitutional as applied to its ads. It contends that the governmental interest in providing information to the electorate does not justify requiring disclaimers for any commercial advertisements, including the ones at issue here. We disagree. The ads fall within BCRA’s definition of an electioneering communication: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. The disclaimers required by §311 provide the electorate with information, and insure that
speaking. At the very least, the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party.

Citizens United argues that disclosure requirements can chill donations to an organization by exposing donors to retaliation. Some amici point to recent events in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation. In *McConnell*, the Court recognized that §201 would be unconstitutional as applied to an organization if there were a reasonable probability that the group’s members would face threats, harassment, or reprisals if their names were disclosed. The examples cited by amici are cause for concern. Citizens United, however, has offered no evidence that its members may face similar threats or reprisals. To the contrary, Citizens United has been disclosing its donors for years and has identified no instance of harassment or retaliation. . . .

C

For the same reasons we uphold the application of BCRA §§201 and 311 to the ads, we affirm their application to *Hillary*. We find no constitutional impediment to the application of BCRA’s disclaimer and disclosure requirements to a movie broadcast via video-on-demand. And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.

V

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. Under *Austin*, though, officials could have done more than discourage its distribution—they could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Modern day movies, television comedies, or skits on Youtube.com might portray public officials or public policies in unflattering ways. Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation, other than an exempt media corporation, has made the “purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value” in order to engage in political speech. Speech would be suppressed in the realm
where its necessity is most evident: in the public dialogue preceding a real election. Governments are often hostile to speech, but under our law and our tradition it seems stranger than fiction for our Government to make this political speech a crime. Yet this is the statute’s purpose and design.

Some members of the public might consider *Hillary* to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation’s course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.

The judgment of the District Court is reversed with respect to the constitutionality of 2 U. S. C. §441b’s restrictions on corporate independent expenditures. The judgment is affirmed with respect to BCRA’s disclaimer and disclosure requirements. The case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

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CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, concurring.

The Government urges us in this case to uphold a direct prohibition on political speech. It asks us to embrace a theory of the First Amendment that would allow censorship not only of television and radio broadcasts, but of pamphlets, posters, the Internet, and virtually any other medium that corporations and unions might find useful in expressing their views on matters of public concern. Its theory, if accepted, would empower the Government to prohibit newspapers from running editorials or opinion pieces supporting or opposing candidates for office, so long as the newspapers were owned by corporations, as the major ones are. First Amendment rights could be confined to individuals, subverting the vibrant public discourse that is at the foundation of our democracy.

The Court properly rejects that theory, and I join its opinion in full. The First Amendment protects more than just the individual on a soapbox and the lonely pamphleteer. I write separately to address the important principles of judicial
I

Judging the constitutionality of an Act of Congress is “the gravest and most delicate duty that this Court is called upon to perform.” Because the stakes are so high, our standard practice is to refrain from addressing constitutional questions except when necessary to rule on particular claims before us. This policy underlies both our willingness to construe ambiguous statutes to avoid constitutional problems and our practice “never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.” The majority and dissent are united in expressing allegiance to these principles. But I cannot agree with my dissenting colleagues on how these principles apply in this case.

The majority’s step-by-step analysis accords with our standard practice of avoiding broad constitutional questions except when necessary to decide the case before us. The majority begins by addressing—and quite properly rejecting—Citizens United’s statutory claim that 2 U.S.C. §441b does not actually cover its production and distribution of Hillary: The Movie. If there were a valid basis for deciding this statutory claim in Citizens United’s favor (and thereby avoiding constitutional adjudication), it would be proper to do so. Indeed, that is precisely the approach the Court took just last Term in Northwest Austin Municipal Util. Dist. No. One v. Holder (2009), when eight Members of the Court agreed to decide the case on statutory grounds instead of reaching the appellant’s broader argument that the Voting Rights Act is unconstitutional.

It is only because the majority rejects Citizens United’s statutory claim that it proceeds to consider the group’s various constitutional arguments, beginning with its narrowest claim (that Hillary is not the functional equivalent of express advocacy) and proceeding to its broadest claim (that Austin v. Michigan Chamber of Commerce (1990) should be overruled). This is the same order of operations followed by the controlling opinion in Federal Election Comm. v. Wisconsin Right to Life, Inc. There the appellant was able to prevail on its narrowest constitutional argument because its broadcast ads did not qualify as the functional equivalent of express advocacy; there was thus no need to go on to address the broader claim that McConnell should be overruled. This case is different—not, as the dissent suggests, because the approach taken in WRTL has been deemed a failure—but because, in the absence of any valid narrower ground of decision, there is no way to avoid Citizens United’s broader constitutional argument.
The dissent advocates an approach to addressing Citizens United’s claims that I find quite perplexing. It presumably agrees with the majority that Citizens United’s narrower statutory and constitutional arguments lack merit, otherwise its conclusion that the group should lose this case would make no sense. Despite agreeing that these narrower arguments fail, however, the dissent argues that the majority should nonetheless latch on to one of them in order to avoid reaching the broader constitutional question of whether Austin remains good law. It even suggests that the Court’s failure to adopt one of these concededly meritless arguments is a sign that the majority is not serious about judicial restraint.

This approach is based on a false premise: that our practice of avoiding unnecessary (and unnecessarily broad) constitutional holdings somehow trumps our obligation faithfully to interpret the law. It should go without saying, however, that we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right. Thus while it is true that “if it is not necessary to decide more, it is necessary not to decide more,” sometimes it is necessary to decide more. There is a difference between judicial restraint and judicial abdication. When constitutional questions are “indispensably necessary” to resolving the case at hand, the court must meet and decide them. . . .

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JUSTICE SCALIA, with whom JUSTICE ALITO joins, and with whom JUSTICE THOMAS joins in part, concurring.

I join the opinion of the Court.

I write separately to address JUSTICE STEVENS DISCUSSION of Original Understandings. This section of the dissent purports to show that today’s decision is not supported by the original understanding of the First Amendment. The dissent attempts this demonstration, however, in splendid isolation from the text of the First Amendment. It never shows why the freedom of speech that was the right of Englishmen did not include the freedom to speak in association with other individuals, including association in the corporate form. To be sure, in 1791 (as now) corporations could pursue only the objectives set forth in their charters; but the dissent provides no evidence that their speech in the pursuit of those objectives could be censored.

Instead of taking this straightforward approach to
a detailed exploration of the Framers’ views about the role of
corporations in society. The Framers didn’t like corporations,
the dissent concludes, and therefore it follows (as night the day)
that corporations had no rights of free speech. Of course the
Framers’ personal affection or disaffection for corporations
is relevant only insofar as it can be thought to be reflected in the
understood meaning of the text they enacted—not, as the dissent
suggests, as a freestanding substitute for that text. But the
dissent’s distortion of proper analysis is even worse than that.
Though faced with a constitutional text that makes no
distinction between types of speakers, the dissent feels no
necessity to provide even an isolated statement from the
founding era to the effect that corporations are not covered, but
places the burden on petitioners to bring forward statements
showing that they are (there is not a scintilla of evidence to
support the notion that anyone believed [the First Amendment
would preclude regulatory distinctions based on the corporate
form]).

Despite the corporation-hating quotations the dissent has
dredged up, it is far from clear that by the end of the 18th
century corporations were despised. If so, how came there to be
so many of them? The dissent’s statement that there were few
business corporations during the eighteenth century, only a few
hundred during all of the 18th century, is misleading. There
were approximately 335 charters issued to business corporations
in the United States by the end of the 18th century. This was a
considerable extension of corporate enterprise in the field of
business, and represented unprecedented growth. Moreover,
what seems like a small number by today’s standards surely
does not indicate the relative importance of corporations when
the Nation was considerably smaller. As I have previously
noted, by the end of the eighteenth century the corporation was
a familiar figure in American economic life.

Even if we thought it proper to apply the dissent’s approach
of excluding from First Amendment coverage what the
Founders disliked, and even if we agreed that the Founders
disliked founding-era corporations; modern corporations might
not qualify for exclusion. Most of the Founders’ resentment
towards corporations was directed at the state-granted
monopoly privileges that individually chartered corporations
enjoyed. Modern corporations do not have such privileges, and
would probably have been favored by most of our enterprising
Founders—excluding, perhaps, Thomas Jefferson and others
favoring perpetuation of an agrarian society. Moreover, if the
Founders’ specific intent with respect to corporations is what
matters, why does the dissent ignore the Founders’ views about
other legal entities that have more in common with modern
the time of the founding, religious, educational, and literary corporations were incorporated under general incorporation statutes, much as business corporations are today. There were also small unincorporated business associations, which some have argued were the true progenitors of today’s business corporations. Were all of these silently excluded from the protections of the First Amendment?

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary, colleges, towns and cities, religious institutions, and guilds had long been organized as corporations at common law and under the King’s charter, and as I have discussed, the practice of incorporation only expanded in the United States. Both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. The New York Sons of Liberty sent a circular to colonies farther south in 1766. And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757. The dissent offers no evidence—none whatever—that the First Amendment’s unqualified text was originally understood to exclude such associational speech from its protection.

Historical evidence relating to the textually similar clause “the freedom of . . . the press” also provides no support for the proposition that the First Amendment excludes conduct of artificial legal entities from the scope of its protection. The freedom of the press was widely understood to protect the publishing activities of individual editors and printers. But these individuals often acted through newspapers, which (much like corporations) had their own names, outlived the individuals who had founded them, could be bought and sold, were sometimes owned by more than one person, and were operated for profit. Their activities were not stripped of First Amendment protection simply because they were carried out under the banner of an artificial legal entity. And the notion which follows from the dissent’s view, that modern newspapers, since they are incorporated, have free-speech rights only at the sufferance of Congress, boggles the mind.

The dissent says that when the Framers constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual men and women—not, for example, of trees.
includes the right to speak in association with other individual persons. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of “an individual American.” It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not—an individual American.

But to return to, and summarize, my principal point, which is the conformity of today’s opinion with the original meaning of the First Amendment. The Amendment is written in terms of “speech,” not speakers. Its text offers no foothold for excluding any category of speaker, from single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals—and the dissent offers no evidence about the original meaning of the text to support any such exclusion. We are therefore simply left with the question whether the speech at issue in this case is “speech” covered by the First Amendment. No one says otherwise. A documentary film critical of a potential Presidential candidate is core political speech, and its nature as such does not change simply because it was funded by a corporation. Nor does the character of that funding produce any reduction whatever in the inherent worth of the speech and its capacity for informing the public. Indeed, to exclude or impede corporate speech is to muzzle the principal agents of the modern free economy. We should celebrate rather than condemn the addition of this speech to the public debate.

JUSTICE THOMAS, concurring in part and dissenting in part.

I join all but Part IV of the Court’s opinion.

Political speech is entitled to robust protection under the First Amendment. Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) has never been reconcilable with that protection. By striking down §203, the Court takes an important first step toward restoring full constitutional protection to speech that is indispensable to the effective and intelligent use of the processes of popular government. I dissent from Part IV of the Court’s opinion, however, because the
disclosure, disclaimer, and reporting requirements in BCRA §§201 and 311 are also unconstitutional.

Congress may not abridge the right to anonymous speech based on the simple interest in providing voters with additional relevant information. In continuing to hold otherwise, the Court misapprehends the import of recent events that some amici describe in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation. The Court properly recognizes these events as cause for concern, but fails to acknowledge their constitutional significance. In my view, amici’s submissions show why the Court’s insistence on upholding §§201 and 311 will ultimately prove as misguided (and ill fated) as was its prior approval of §203.

Amici’s examples relate principally to Proposition 8, a state ballot proposition that California voters narrowly passed in the 2008 general election. Proposition 8 amended California’s constitution to provide that only marriage between a man and a woman is valid or recognized in California. Any donor who gave more than $100 to any committee supporting or opposing Proposition 8 was required to disclose his full name, street address, occupation, employer’s name (or business name, if self-employed), and the total amount of his contributions. The California Secretary of State was then required to post this information on the Internet.

Some opponents of Proposition 8 compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result. They cited these incidents in a complaint they filed after the 2008 election, seeking to invalidate California’s mandatory disclosure laws. Supporters recounted being told: “Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter,” or, “we have plans for you and your friends.” Proposition 8 opponents also allegedly harassed the measure’s supporters by defacing or damaging their property. Two religious organizations supporting Proposition 8 reportedly received through the mail envelopes containing a white powdery substance.

The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to pre-empt citizens’ exercise of their First Amendment rights. Before the 2008 Presidential election, a newly formed nonprofit group planned to confront donors to conservative groups, hoping to create a chilling effect that will
“going for the jugular,” detailed the group’s plan to send a warning letter alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including legal trouble, public exposure and watchdog groups digging through their lives.

These instances of retaliation sufficiently demonstrate why this Court should invalidate mandatory disclosure and reporting requirements. But amici present evidence of yet another reason to do so—the threat of retaliation from elected officials. As amici submissions make clear, this threat extends far beyond a single ballot proposition in California. For example, a candidate challenging an incumbent state attorney general reported that some members of the State’s business community feared donating to his campaign because they did not want to cross the incumbent; in his words, I go to so many people and hear the same thing: “I sure hope you beat [the incumbent], but I can’t afford to have my name on your records. He might come after me next.” The incumbent won reelection in 2008.

My point is not to express any view on the merits of the political controversies I describe. Rather, it is to demonstrate, using real-world, recent examples, the fallacy in the Court’s conclusion that disclaimer and disclosure requirements impose no ceiling on campaign-related activities, and do not prevent anyone from speaking. Of course they do. Disclaimer and disclosure requirements enable private citizens and elected officials to implement political strategies specifically calculated to curtail campaign-related activity and prevent the lawful, peaceful exercise of First Amendment rights.

The Court nevertheless insists that as-applied challenges to disclosure requirements will suffice to vindicate those speech rights, as long as potential plaintiffs can show a reasonable probability that disclosure will subject them to threats, harassment, or reprisals from either Government officials or private parties. But the Court’s opinion itself proves the irony in this compromise. In correctly explaining why it must address the facial constitutionality of §203, the Court recognizes that the First Amendment does not permit laws that force speakers to seek declaratory rulings before discussing the most salient political issues of our day; that as-applied challenges to §203 would require substantial litigation over an extended time and result in an interpretive process that itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable; that a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling; and
substantial, nation-wide chilling effect that §203 causes. This logic, of course, applies equally to as-applied challenges to §§201 and 311.

Irony aside, the Court’s promise that as-applied challenges will adequately protect speech is a hollow assurance. Now more than ever, §§201 and 311 will chill protected speech because—as California voters can attest—the advent of the Internet enables prompt disclosure of expenditures, which provides political opponents with the information needed to intimidate and retaliate against their foes.

I cannot endorse a view of the First Amendment that subjects citizens of this Nation to death threats, ruined careers, damaged or defaced property, or pre-emptive and threatening warning letters as the price for engaging in core political speech, the primary object of First Amendment protection. Accordingly, I respectfully dissent from the Court’s judgment upholding BCRA §§201 and 311.

JUSTICE STEVENS, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, concurring in part and dissenting in part.

The real issue in this case concerns how, not if, the appellant may finance its electioneering. Citizens United is a wealthy nonprofit corporation that runs a political action committee (PAC) with millions of dollars in assets. Under the Bipartisan Campaign Reform Act of 2002 (BCRA), it could have used those assets to televise and promote Hillary: The Movie wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast Hillary at any time other than the 30 days before the last primary election. Neither Citizens United’s nor any other corporation’s speech has been “banned.” All that the parties dispute is whether Citizens United had a right to use the funds in its general treasury to pay for broadcasts during the 30-day period. The notion that the First Amendment dictates an affirmative answer to that question is, in my judgment, profoundly misguided. Even more misguided is the notion that the Court must rewrite the law relating to campaign expenditures by for-profit corporations and unions to decide this case.

The basic premise underlying the Court’s ruling is its iteration, and constant reiteration, of the proposition that the First Amendment bars regulatory distinctions based on a speaker’s identity, including its “identity” as a corporation.
While that glittering generality has rhetorical appeal, it is not a correct statement of the law. Nor does it tell us when a corporation may engage in electioneering that some of its shareholders oppose. It does not even resolve the specific question whether Citizens United may be required to finance some of its messages with the money in its PAC. The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court’s disposition of this case.

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

The majority’s approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907. We have unanimously concluded that this reflects a permissible assessment of the dangers posed by those entities to the electoral process, and have accepted the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation. The Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty born of Austin v. Michigan Chamber of Commerce (1990). Relying largely on individual dissenting opinions, the majority blazes through our precedents, overruling or disavowing a body of case law including FEC v. Wisconsin Right to Life, Inc. (2007) (WRTL), McConnell v. FEC (2003), FEC v. Beaumont, (2003), FEC v. Massachusetts Citizens for Life, Inc., (1986) (MCFL), NRWC, and California Medical Assn. v. FEC (1981).

In his landmark concurrence in Ashwander v. TVA, 297 U. S. 288, 346 (1936), Justice Brandeis stressed the importance of adhering to rules the Court has developed for its own governance when deciding constitutional questions. Because departures from those rules always enhance the risk of error, I shall explain why the Court’s analysis rests on a faulty
understanding of *Austin* and *McConnell* and of our campaign finance jurisprudence more generally.

I

The Court’s ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Before turning to the question whether to overrule *Austin* and part of *McConnell*, it is important to explain why the Court should not be deciding that question.

_Scope of the Case_

The first reason is that the question was not properly brought before us. In declaring §203 of BCRA facially unconstitutional on the ground that corporations’ electoral expenditures may not be regulated any more stringently than those of individuals, the majority decides this case on a basis relinquished below, not included in the questions presented to us by the litigants, and argued here only in response to the Court’s invitation. This procedure is unusual and inadvisable for a court. Our colleagues’ suggestion that ‘we are asked to reconsider *Austin* and, in effect, *McConnell*,’ would be more accurate if rephrased to state that ‘we have asked ourselves’ to reconsider those cases. . . . It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed, and it is only in the most exceptional cases that we will consider issues outside the questions presented. The appellant in this case did not so much as assert an exceptional circumstance, and one searches the majority opinion in vain for the mention of any. That is unsurprising, for none exists.

Setting the case for reargument was a constructive step, but it did not cure this fundamental problem. Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.

_As-Applied and Facial Challenges_

This Court has repeatedly emphasized in recent years that facial challenges are disfavored. By declaring §203 facially unconstitutional, our colleagues have turned an as-applied challenge into a facial challenge, in defiance of this principle.

This is not merely a technical defect in the Court’s decision. The unnecessary resort to a facial inquiry runs contrary to the
neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. Scanting that principle threatens to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. These concerns are heightened when judges overrule settled doctrine upon which the legislature has relied. The Court operates with a sledge hammer rather than a scalpel when it strikes down one of Congress’ most significant efforts to regulate the role that corporations and unions play in electoral politics. It compounds the offense by implicitly striking down a great many state laws as well.

The problem goes still deeper, for the Court does all of this on the basis of pure speculation. Had Citizens United maintained a facial challenge, and thus argued that there are virtually no circumstances in which BCRA §203 can be applied constitutionally, the parties could have developed, through the normal process of litigation, a record about the actual effects of §203, its actual burdens and its actual benefits, on all manner of corporations and unions. Claims of facial invalidity often rest on speculation, and consequently raise the risk of premature interpretation of statutes on the basis of factually barebones records. In this case, the record is not simply incomplete or unsatisfactory; it is nonexistent. Congress crafted BCRA in response to a virtual mountain of research on the corruption that previous legislation had failed to avert. The Court now negates Congress’ efforts without a shred of evidence on how §203 or its state-law counterparts have been affecting any entity other than Citizens United.

Faced with this gaping empirical hole, the majority throws up its hands. Were we to confine our inquiry to Citizens United’s as-applied challenge, it protests, we would commence an extended process of drawing, and then redrawing, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker. While tacitly acknowledging that some applications of §203 might be found constitutional, the majority thus posits a future in which novel First Amendment standards must be devised on an ad hoc basis, and then leaps from this unfounded prediction to the unfounded conclusion that such complexity counsels the abandonment of all normal restraint. Yet it is a pervasive feature of regulatory systems that unanticipated events, such as new technologies, may raise some unanticipated difficulties at the margins. The fluid nature of electioneering communications does not make this case special. The fact that a Court can hypothesize situations in which a statute might, at some point
not come close to meeting the standard for a facial challenge. . .

The majority suggests that a facial ruling is necessary because anything less would chill too much protected speech. In addition to begging the question what types of corporate spending are constitutionally protected and to what extent, this claim rests on the assertion that some significant number of corporations have been cowed into quiescence by FEC “censorship.” That assertion is unsubstantiated, and it is hard to square with practical experience. It is particularly hard to square with the legal landscape following *WRTL*, which held that a corporate communication could be regulated under §203 only if it was “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The whole point of this test was to make §203 as simple and speech-protective as possible. The Court does not explain how, in the span of a single election cycle, it has determined THE CHIEF JUSTICE’s project to be a failure. In this respect, too, the majority’s critique of line-drawing collapses into a critique of the as-applied review method generally. . . .

Finally, the majority suggests that though the scope of Citizens United’s claim may be narrow, a facial ruling is necessary as a matter of remedy. Relying on a law review article, it asserts that Citizens United’s dismissal of the facial challenge does not prevent us from making broader pronouncements of invalidity in properly as-applied cases. The majority is on firmer conceptual ground here. Yet even if one accepts this, one must proceed to ask which as-applied challenges, if successful, will properly invite or entail invalidation of the underlying statute. The paradigmatic case is a judicial determination that the legislature acted with an impermissible purpose in enacting a provision, as this carries the necessary implication that all future as-applied challenges to the provision must prevail.

Citizens United’s as-applied challenge was not of this sort. Until this Court ordered reargument, its contention was that BCRA §203 could not lawfully be applied to a feature-length video-on-demand film (such as *Hillary*) or to a nonprofit corporation exempt from taxation under and funded overwhelmingly by individuals (such as itself). Success on either of these claims would not necessarily carry any implications for the validity of §203 as applied to other types of broadcasts, other types of corporations, or unions. It certainly would not invalidate the statute as applied to a large for-profit corporation. There is no legitimate basis for resurrecting a facial challenge that dropped out of this case 20 months ago.
Narrower Grounds

It is all the more distressing that our colleagues have manufactured a facial challenge, because the parties have advanced numerous ways to resolve the case that would facilitate electioneering by nonprofit advocacy corporations such as Citizens United, without toppling statutes and precedents. Which is to say, the majority has transgressed yet another cardinal principle of the judicial process: “If it is not necessary to decide more, it is necessary not to decide more.”

Consider just three of the narrower grounds of decision that the majority has bypassed. First, the Court could have ruled, on statutory grounds, that a feature-length film distributed through video-on-demand does not qualify as an “electioneering communication” under §203 of BCRA. . .

Second, the Court could have expanded the MCFL exemption to cover §501(c)(4) nonprofits that accept only a de minimis amount of money from for-profit corporations. Citizens United professes to be such a group: Its brief says it “is funded predominantly by donations from individuals who support its ideological message.” Numerous Courts of Appeal have held that de minimis business support does not, in itself, remove an otherwise qualifying organization from the ambit of MCFL. This Court could have simply followed their lead.

Finally, let us not forget Citizens United’s as-applied constitutional challenge. Precisely because Citizens United looks so much like the MCFL organizations we have exempted from regulation, while a feature-length video-on-demand film looks so unlike the types of electoral advocacy Congress has found deserving of regulation, this challenge is a substantial one. As the appellant’s own arguments show, the Court could have easily limited the breadth of its constitutional holding had it declined to adopt the novel notion that speakers and speech acts must always be treated identically—and always spared expenditures restrictions—in the political realm. Yet the Court nonetheless turns its back on the as-applied review process that has been a staple of campaign finance litigation since Buckley v. Valeo, and that was affirmed and expanded just two Terms ago in WRTL.

This brief tour of alternative grounds on which the case could have been decided is not meant to show that any of these grounds is ideal, though each is perfectly valid. It is meant to show that there were principled, narrower paths that a Court that was serious about judicial restraint could have taken. There was also the straightforward path: applying Austin and McConnell.
just as the District Court did in holding that the funding of Citizens United’s film can be regulated under them. The only thing preventing the majority from affirming the District Court, or adopting a narrower ground that would retain *Austin*, is its disdain for *Austin*.

II

The final principle of judicial process that the majority violates is the most transparent: *stare decisis*. I am not an absolutist when it comes to *stare decisis*, in the campaign finance area or in any other. No one is. But if this principle is to do any meaningful work in supporting the rule of law, it must at least demand a significant justification, beyond the preferences of five Justices, for overturning settled doctrine. A decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided. No such justification exists in this case, and to the contrary there are powerful prudential reasons to keep faith with our precedents.

The Court’s central argument for why *stare decisis* ought to be trumped is that it does not like *Austin*. The opinion “was not well reasoned,” our colleagues assert, and it conflicts with First Amendment principles. This, of course, is the Court’s merits argument, the many defects in which we will soon consider. I am perfectly willing to concede that if one of our precedents were dead wrong in its reasoning or irreconcilable with the rest of our doctrine, there would be a compelling basis for revisiting it. But neither is true of *Austin*, and restating a merits argument with additional vigor does not give it extra weight in the *stare decisis* calculus.

Perhaps in recognition of this point, the Court supplements its merits case with a smattering of assertions. The Court proclaims that “*Austin is undermined by experience since its announcement.*” This is a curious claim to make in a case that lacks a developed record. The majority has no empirical evidence with which to substantiate the claim; we just have its *ipse dixit* that the real world has not been kind to *Austin*. Nor does the majority bother to specify in what sense *Austin* has been “undermined.”

The majority also contends that the Government’s hesitation to rely on *Austin*’s antidistortion rationale “diminishes” the principle of adhering to that precedent. Why it diminishes the value of *stare decisis* is left unexplained. We have never thought fit to overrule a precedent because a litigant has taken any particular tack. Nor should we. Our decisions can often be defended on multiple grounds, and a litigant may have strategic
Members of the public, moreover, often rely on our bottom-line holdings far more than our precise legal arguments; surely this is true for the legislatures that have been regulating corporate electioneering since *Austin*. The task of evaluating the continued viability of precedents falls to this Court, not to the parties.

Although the majority opinion spends several pages making these surprising arguments, it says almost nothing about the standard considerations we have used to determine *stare decisis* value, such as the antiquity of the precedent, the workability of its legal rule, and the reliance interests at stake. It is also conspicuously silent about *McConnell*, even though the *McConnell* Court’s decision to uphold BCRA §203 relied not only on the antidistortion logic of *Austin* but also on the statute’s historical pedigree, and the need to preserve the integrity of federal campaigns.

*Stare decisis* protects not only personal rights involving property or contract but also the ability of the elected branches to shape their laws in an effective and coherent fashion. Today’s decision takes away a power that we have long permitted these branches to exercise. State legislatures have relied on their authority to regulate corporate electioneering, confirmed in *Austin*, for more than a century. The Federal Congress has relied on this authority for a comparable stretch of time, and it specifically relied on *Austin* throughout the years it spent developing and debating BCRA. The total record it compiled was 100,000 pages long. Pulling out the rug beneath Congress after affirming the constitutionality of §203 six years ago shows great disrespect for a coequal branch.

Beyond the reliance interests at stake, the other *stare decisis* factors also cut against the Court. Considerations of antiquity are significant for similar reasons. *McConnell* is only six years old, but *Austin* has been on the books for two decades, and many of the statutes called into question by today’s opinion have been on the books for a half-century or more. The Court points to no intervening change in circumstances that warrants revisiting *Austin*. Certainly nothing relevant has changed since we decided *WRTL* two Terms ago. And the Court gives no reason to think that *Austin* and *McConnell* are unworkable.

In the end, the Court’s rejection of *Austin* and *McConnell* comes down to nothing more than its disagreement with their results. Virtually every one of its arguments was made and rejected in those cases, and the majority opinion is essentially an amalgamation of resuscitated dissents. The only relevant thing that has changed since *Austin* and *McConnell* is the
vitals of *stare decisis*, the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion that permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals.

III

The novelty of the Court’s procedural dereliction and its approach to *stare decisis* is matched by the novelty of its ruling on the merits. The ruling rests on several premises. First, the Court claims that *Austin* and *McConnell* have “banned” corporate speech. Second, it claims that the *First Amendment* precludes regulatory distinctions based on speaker identity, including the speaker’s identity as a corporation. Third, it claims that *Austin* and *McConnell* were radical outliers in our *First Amendment* tradition and our campaign finance jurisprudence. Each of these claims is wrong.

[Justice Stevens then presented a lengthy overview of campaign finance reform, the Court’s decisions, and an argument that the Framers had no intention of including corporations as “persons” under the *First Amendment*.]

IV

Having explained why this is not an appropriate case in which to revisit *Austin* and *McConnell* and why these decisions sit perfectly well with *First Amendment* principles, I come at last to the interests that are at stake. The majority recognizes that *Austin* and *McConnell* may be defended on anticorruption, antidistortion, and shareholder protection rationales. It badly errs both in explaining the nature of these rationales, which overlap and complement each other, and in applying them to the case at hand.

*The Anticorruption Interest*

Undergirding the majority’s approach to the merits is the claim that the only sufficiently important governmental interest in preventing corruption or the appearance of corruption is one that is limited to *quid pro quo* corruption. This is the same crabbed view of corruption that was espoused by JUSTICE KENNEDY in *McConnell* and squarely rejected by the Court in that case. While it is true that we have not always spoken about corruption in a clear or consistent voice, the approach taken by the majority cannot be right, in my judgment. It disregards our constitutional history and the fundamental demands of a democratic society.
On numerous occasions we have recognized Congress’ legitimate interest in preventing the money that is spent on elections from exerting an undue influence on an officeholder’s judgment and from creating the appearance of such influence, beyond the sphere of *quid pro quo* relationships. Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling access is not qualitatively different from giving special preference to those who spent money on one’s behalf. Corruption operates along a spectrum, and the majority’s apparent belief that *quid pro quo* arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other’s backs and which amply supported Congress’ determination to target a limited set of especially destructive practices.

Our undue influence cases have allowed the American people to cast a wider net through legislative experiments designed to ensure, to some minimal extent, that officeholders will decide issues on the merits or the desires of their constituencies, and not according to the wishes of those who have made large financial contributions or expenditures valued by the officeholder. When private interests are seen to exert outsized control over officeholders solely on account of the money spent on (or withheld from) their campaigns, the result can depart so thoroughly from what is pure or correct in the conduct of Government, that it amounts to a subversion of the electoral process. At stake in the legislative efforts to address this threat is therefore not only the legitimacy and quality of Government but also the public’s faith therein, not only the capacity of this democracy to represent its constituents but also the confidence of its citizens in their capacity to govern themselves. Take away Congress’ authority to regulate the appearance of undue influence and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.

Unlike the majority’s myopic focus on *quid pro quo* scenarios and the free-floating First Amendment principles on which it rests so much weight, this broader understanding of corruption has deep roots in the Nation’s history. During debates on the earliest campaign finance reform acts, the terms “corruption” and “undue influence” were used nearly interchangeably. Long before *Buckley*, we appreciated that to
legislation to safeguard an election from the improper use of money to influence the result is to deny the nation in a vital particular the power of self protection. And whereas we have no evidence to support the notion that the Framers would have wanted corporations to have the same rights as natural persons in the electoral context, we have ample evidence to suggest that they would have been appalled by the evidence of corruption that Congress unearthed in developing BCRA and that the Court today discounts to irrelevance. It is fair to say that the Framers were obsessed with corruption, which they understood to encompass the dependency of public officeholders on private interests. They discussed corruption more often in the Constitutional Convention than factions, violence, or instability. When they brought our constitutional order into being, the Framers had their minds trained on a threat to republican self government that this Court has lost sight of.

Quid Pro Quo Corruption

There is no need to take my side in the debate over the scope of the anticorruption interest to see that the Court’s merits holding is wrong. Even under the majority’s crabbed view of corruption, the Government should not lose this case.

The importance of the governmental interest in preventing corruption through the creation of political debts has never been doubted. Even in the cases that have construed the anticorruption interest most narrowly, we have never suggested that such *quid pro quo* debts must take the form of outright vote buying or bribes, which have long been distinct crimes. Rather, they encompass the myriad ways in which outside parties may induce an officeholder to confer a legislative benefit in direct response to, or anticipation of, some outlay of money the parties have made or will make on behalf of the officeholder. We have not limited the anticorruption interest to the elimination of cash-for-votes exchanges. In *Buckley*, we expressly rejected the argument that antibribery laws provided a less restrictive alternative to FECA’s contribution limits, noting that such laws dealt with only the most blatant and specific attempts of those with money to influence governmental action. It has likewise never been doubted that of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption. Congress may legitimately conclude that the avoidance of the appearance of improper influence is also critical if confidence in the system of representative Government is not to be eroded to a disastrous extent. A democracy cannot function effectively when its constituent members believe laws are being bought and sold. In theory, our colleagues accept this much. As applied to BCRA §203,
however, they conclude the anticorruption interest is not sufficient to displace the speech here in question.

The Austin Court did not rest its holding on *quid pro quo* corruption, as it found the broader corruption implicated by the antidistortion and shareholder protection rationales a sufficient basis for Michigan’s restriction on corporate electioneering. Concurring in that opinion, I took the position that the danger of either the fact, or the appearance, of *quid pro quo* relationships also provides an adequate justification for state regulation of these independent expenditures. I did not see this position as inconsistent with Buckley’s analysis of individual expenditures. Corporations, as a class, tend to be more attuned to the complexities of the legislative process and more directly affected by tax and appropriations measures that receive little public scrutiny; they also have vastly more money with which to try to buy access and votes. Business corporations must engage the political process in instrumental terms if they are to maximize shareholder value. The unparalleled resources, professional lobbyists, and single-minded focus they bring to this effort, I believed, make *quid pro quo* corruption and its appearance inherently more likely when they (or their conduits or trade groups) spend unrestricted sums on elections.

It is with regret rather than satisfaction that I can now say that time has borne out my concerns. The legislative and judicial proceedings relating to BCRA generated a substantial body of evidence suggesting that, as corporations grew more and more adept at crafting “issue ads” to help or harm a particular candidate, these nominally independent expenditures began to corrupt the political process in a very direct sense. The sponsors of these ads were routinely granted special access after the campaign was over; candidates and officials knew who their friends were. Many corporate independent expenditures, it seemed, had become essentially interchangeable with direct contributions in their capacity to generate *quid pro quo* arrangements. In an age in which money and television ads are the coin of the campaign realm, it is hardly surprising that corporations deployed these ads to curry favor with, and to gain influence over, public officials.

The majority’s rejection of the Buckley anticorruption rationale on the ground that independent corporate expenditures do not give rise to [*quid pro quo*] corruption or the appearance of corruption, is thus unfair as well as unreasonable. Congress and outside experts have generated significant evidence corroborating this rationale, and the only reason we do not have any of the relevant materials before us is that the Government had no reason to develop a record at trial for a facial challenge.
choose to relitigate *McConnell* on appeal and then complain that the Government has failed to substantiate its case. If our colleagues were really serious about the interest in preventing *quid pro quo* corruption, they would remand to the District Court with instructions to commence evidentiary proceedings.

The insight that even technically independent expenditures can be corrupting in much the same way as direct contributions is bolstered by our decision last year in *Caperton v. A. T. Massey Coal Co.* (2009). In that case, Don Blankenship, the chief executive officer of a corporation with a lawsuit pending before the West Virginia high court, spent large sums on behalf of a particular candidate, Brent Benjamin, running for a seat on that court. In addition to contributing the $1,000 statutory maximum to Benjamin’s campaign committee, Blankenship donated almost $2.5 million to “And For The Sake Of The Kids,” a §527 corporation that ran ads targeting Benjamin’s opponent. This was not all. Blankenship spent, in addition, just over $500,000 on independent expenditures to support Brent Benjamin. Applying its common sense, this Court accepted petitioners’ argument that Blankenship’s pivotal role in getting Justice Benjamin elected created a constitutionally intolerable probability of actual bias when Benjamin later declined to recuse himself from the appeal by Blankenship’s corporation. Though no bribe or criminal influence was involved, we recognized that Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship for his extraordinary efforts to get him elected.”The difficulties of inquiring into actual bias,” we further noted, “simply underscore the need for objective rules,” rules which will perforce turn on the appearance of bias rather than its actual existence.

In *Caperton*, then, we accepted the premise that, at least in some circumstances, independent expenditures on candidate elections will raise an intolerable specter of *quid pro quo* corruption. Indeed, this premise struck the Court as so intuitive that it repeatedly referred to Blankenship’s spending on behalf of Benjamin—spending that consisted of 99.97% independent expenditures ($3 million) and 0.03% direct contributions ($1,000)—as a contribution. The reason the Court so thoroughly conflated expenditures and contributions, one assumes, is that it realized that some expenditures may be functionally equivalent to contributions in the way they influence the outcome of a race, the way they are interpreted by the candidates and the public, and the way they taint the decisions that the officeholder thereafter takes.

*Caperton* underscores that the consequences of today’s holding will not be limited to the legislative or executive
popular elections. At a time when concerns about the conduct of judicial elections have reached a fever pitch, the Court today unleashes the floodgates of corporate and union general treasury spending in these races. Perhaps Caperton motions will catch some of the worst abuses. This will be small comfort to those States that, after today, may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.

Deferece and Incumbent Self-Protection

Rather than show any deference to a coordinate branch of Government, the majority thus rejects the anticorruption rationale without serious analysis. Today’s opinion provides no clear rationale for being so dismissive of Congress, but the prior individual opinions on which it relies have offered one: the incentives of the legislators who passed BCRA. Section 203, our colleagues have suggested, may be little more than “an incumbency protection plan,” a disreputable attempt at legislative self-dealing rather than an earnest effort to facilitate First Amendment values and safeguard the legitimacy of our political system. This possibility, the Court apparently believes, licenses it to run roughshod over Congress’ handiwork.

In my view, we should instead start by acknowledging that “Congress surely has both wisdom and experience in these matters that is far superior to ours.” Many of our campaign finance precedents explicitly and forcefully affirm the propriety of such presumptive deference. Moreover, “judicial deference is particularly warranted where, as here, we deal with a congressional judgment that has remained essentially unchanged throughout a century of careful legislative adjustment.” In America, incumbent legislators pass the laws that govern campaign finance, just like all other laws. To apply a level of scrutiny that effectively bars them from regulating electioneering whenever there is the faintest whiff of self-interest, is to deprive them of the ability to regulate electioneering.

This is not to say that deference would be appropriate if there were a solid basis for believing that a legislative action was motivated by the desire to protect incumbents or that it will degrade the competitiveness of the electoral process. Along with our duty to balance competing constitutional concerns, we have a vital role to play in ensuring that elections remain at least minimally open, fair, and competitive. But it is the height of recklessness to dismiss Congress’ years of bipartisan
first confirming that the statute in question was intended to be, or will function as, a restraint on electoral competition. “Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions.”

We do not have a solid theoretical basis for condemning §203 as a front for incumbent self-protection, and it seems equally if not more plausible that restrictions on corporate electioneering will be self-denying. Nor do we have a good empirical case for skepticism, as the Court’s failure to cite any empirical research attests. Nor does the legislative history give reason for concern. Congress devoted years of careful study to the issues underlying BCRA. As the Solicitor General aptly remarked at the time, “the evidence supports overwhelmingly that incumbents were able to get re-elected under the old system just fine. It would be hard to develop a scheme that could be better for incumbents.”

In this case, then, “there is no convincing evidence that the important interests favoring expenditure limits are fronts for incumbency protection.” The majority cavalierly ignores Congress’ factual findings and its constitutional judgment: It acknowledges the validity of the interest in preventing corruption, but it effectively discounts the value of that interest to zero. This is quite different from conscientious policing for impermissibly anticompetitive motive or effect in a sensitive First Amendment context. It is the denial of Congress’ authority to regulate corporate spending on elections.

*Austin and Corporate Expenditures*

Just as the majority gives short shrift to the general societal interests at stake in campaign finance regulation, it also overlooks the distinctive considerations raised by the regulation of corporate expenditures. The majority fails to appreciate that *Austin* ’s antidistortion rationale is itself an anticorruption rationale, tied to the special concerns raised by corporations. Understood properly, “antidistortion” is simply a variant on the classic governmental interest in protecting against improper influences on officeholders that debilitate the democratic process. It is manifestly not just an “equalizing” ideal in disguise.

1. Antidistortion
The fact that corporations are different from human beings might seem to need no elaboration, except that the majority opinion almost completely elides it. Austin set forth some of the basic differences. Unlike natural persons, corporations have “limited liability” for their owners and managers, “perpetual life,” separation of ownership and control, “and favorable treatment of the accumulation and distribution of assets ... that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders’ investments.” Unlike voters in U. S. elections, corporations may be foreign controlled. Unlike other interest groups, business corporations have been “effectively delegated responsibility for ensuring society’s economic welfare”; they inescapably structure the life of every citizen. “The resources in the treasury of a business corporation,” furthermore, “are not an indication of popular support for the corporation’s political ideas.” “They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.”

It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their “personhood” often serves as a useful legal fiction. But they are not themselves members of “We the People” by whom and for whom our Constitution was established.

It is an interesting question “who” is even speaking when a business corporation places an advertisement that endorses or attacks a particular candidate. Presumably it is not the customers or employees, who typically have no say in such matters. It cannot realistically be said to be the shareholders, who tend to be far removed from the day-to-day decisions of the firm and whose political preferences may be opaque to management. Perhaps the officers or directors of the corporation have the best claim to be the ones speaking, except their fiduciary duties generally prohibit them from using corporate funds for personal ends. Some individuals associated with the corporation must make the decision to place the ad, but the idea that these individuals are thereby fostering their self-expression or cultivating their critical faculties is fanciful. It is entirely possible that the corporation’s electoral message will conflict with their personal convictions. Take away the ability to use general treasury funds for some of those ads, and no one’s autonomy, dignity, or political equality has been impinged upon...
In short, regulations such as §203 and the statute upheld in *Austin* impose only a limited burden on *First Amendment* freedoms not only because they target a narrow subset of expenditures and leave untouched the broader “public dialogue,” but also because they leave untouched the speech of natural persons. Recognizing the weakness of a speaker-based critique of *Austin*, the Court places primary emphasis not on the corporation’s right to electioneer, but rather on the listener’s interest in hearing what every possible speaker may have to say. The Court’s central argument is that laws such as §203 have “deprived the electorate of information, knowledge and opinion vital to its function,” and this, in turn, “interferes with the ‘open marketplace’ of ideas protected by the *First Amendment*.”

There are many flaws in this argument. If the overriding concern depends on the interests of the audience, surely the public’s perception of the value of corporate speech should be given important weight. That perception today is the same as it was a century ago when Theodore Roosevelt delivered the speeches to Congress that, in time, led to the limited prohibition on corporate campaign expenditures that is overruled today. See *WRTL*, 551 U. S., at 509–510 (Souter, J., dissenting) (summarizing President Roosevelt’s remarks). The distinctive threat to democratic integrity posed by corporate domination of politics was recognized at “the inception of the republic” and “has been a persistent theme in American political life” ever since. It is only certain Members of this Court, not the listeners themselves, who have agitated for more corporate electioneering. . . .

None of this is to suggest that corporations can or should be denied an opportunity to participate in election campaigns or in any other public forum (much less that a work of art such as *Mr. Smith Goes to Washington* may be banned), or to deny that some corporate speech may contribute significantly to public debate. What it shows, however, is that *Austin*’s “concern about corporate domination of the political process” reflects more than a concern to protect governmental interests outside of the *First Amendment*. It also reflects a concern to facilitate *First Amendment* values by preserving some breathing room around the electoral “marketplace” of ideas, the marketplace in which the actual people of this Nation determine how they will govern themselves. The majority seems oblivious to the simple truth that laws such as §203 do not merely pit the anticorruption interest against the *First Amendment*, but also pit competing *First Amendment* values against each other. There are, to be sure, serious concerns with any effort to balance the *First Amendment* rights of speakers against the *First Amendment*
real people and when the appeal to “First Amendment principles” depends almost entirely on the listeners’ perspective, it becomes necessary to consider how listeners will actually be affected. . . .

The Court’s blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process. Americans may be forgiven if they do not feel the Court has advanced the cause of self-government today. . . .

V

Today’s decision is backwards in many senses. It elevates the majority’s agenda over the litigants’ submissions, facial attacks over as-applied claims, broad constitutional theories over narrow statutory grounds, individual dissenting opinions over precedential holdings, assertion over tradition, absolutism over empiricism, rhetoric over reality. Our colleagues have arrived at the conclusion that Austin must be overruled and that §203 is facially unconstitutional only after mischaracterizing both the reach and rationale of those authorities, and after bypassing or ignoring rules of judicial restraint used to cabin the Court’s lawmaking power. Their conclusion that the societal interest in avoiding corruption and the appearance of corruption does not provide an adequate justification for regulating corporate expenditures on candidate elections relies on an incorrect description of that interest, along with a failure to acknowledge the relevance of established facts and the considered judgments of state and federal legislatures over many decades.

In a democratic society, the longstanding consensus on the need to limit corporate campaign spending should outweigh the wooden application of judge-made rules. The majority’s rejection of this principle “elevates corporations to a level of deference which has not been seen at least since the days when substantive due process was regularly used to invalidate regulatory legislation thought to unfairly impinge upon established economic interests.” At bottom, the Court’s opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a
democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

I would affirm the judgment of the District Court.