

**National University of Ireland, Maynooth**

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**From the Selected Works of Seth Barrett Tillman**

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June 28, 2013

Extract from Rotunda & Nowak's Treatise on  
Constitutional Law (5th ed. 2013), Tillman's  
Citizens United and the Scope of Professor  
Teachout's Anti-Corruption Principle

Seth Barrett Tillman



Available at: [https://works.bepress.com/seth\\_barrett\\_tillman/303/](https://works.bepress.com/seth_barrett_tillman/303/)

Treatise on Constitutional Law-Substance & Procedure  
Database updated June 2013Ronald D. Rotunda[\[a0\]](#), John E. Nowak[\[a1\]](#)Chapter  
20. Freedom of Speech  
§

## 20.51. Regulation of Campaign Financing

**§ 20.51(b)(v)(2) Campaign Restrictions on the Independent Expenditures of Corporations**

**Austin.** The first major case to deal with campaign restrictions on the campaign expenditures of corporations was *Austin v. Michigan Chamber of Commerce*,[\[50\]](#) a case that the Court eventually overruled 20 years later.

In *Austin*, the Court (six to three) upheld provisions of the Michigan Campaign Finance Act that prohibits corporations—excluding media corporations—from using corporate treasury funds for independent expenditures in support of, or in opposition to, any candidate in elections for state office. The law, however, did allow corporations to make expenditures from segregated funds used solely for political purposes. The law in question however, did not regulate independent expenditures of *media* corporations or unincorporated *labor unions*.

....

The dissent claimed that the Framers “would have been appalled” by the evidence of corruption in the congressional findings.[\[96\]](#) The dissent argued that the “‘Framers were obsessed with corruption,’ which they understood to encompass the dependency of public officeholders on private interests.”[\[97\]](#) In response, the majority pointed out that the dissent, in marshalling support for its argument, had to argue that “‘corruption’ was originally understood to include ‘moral decay’ and even actions taken by citizens in pursuit of private rather than public ends.” That, said the Court, has nothing to do with the sort of corruption that one might combat by restricting political speech. “Moreover, if speech can be prohibited because, in the view of the Government, it leads to ‘moral decay’ or does not serve ‘public ends,’ then there is no limit to the Government’s censorship power.”[\[98\]](#)

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[\[FN50\]](#) *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S. Ct. 1391, 108 L. Ed. 2d 652 (1990) (overruled by, *Citizens United v. Federal Election Com’n*, 130 S. Ct. 876 (2010)).

In *Austin*, Marshall, J., was joined by Rehnquist, C.J., and Brennan, White, Blackmun, & Stevens, JJ. Brennan, J. and Stevens, J. also filed concurring opinions. Scalia, J., filed a dissenting opinion. Kennedy, J., also filed a dissenting opinion in which O'Connor & Scalia, JJ. joined.

See, Eule, Promoting Speaker Diversity: *Austin* and Metro Broadcasting, 1990 Sup. Ct. Rev. 105 (1990); Ribstein, [Corporate Political Speech](#), 49 Wash. & Lee L. Rev. 109 (1992); Susanna Kim Ripken, Corporate First Amendment Rights after *Citizens United*: An Analysis of the Popular Movement to End the Constitutional Personhood of Corporations, 14 U. Pa. J. Business 209 (2011).

[\[FN96\] 558 U.S. 310, 452, 130 S.Ct. 876, 963](#) (Stevens, J., dissenting).

[\[FN97\] 558 U.S. 310, 452, 130 S.Ct. 876, 963–64](#) (Stevens, J., dissenting), citing Zephyr Teachout, [The Anti-Corruption Principle](#), 94 Cornell L. Rev. 341, 348 (2009).

[\[FN98\] 558 U.S. 310, 391, 130 S.Ct. 876, 928](#), citation omitted, citing Zephyr Teachout, [The Anti-Corruption Principle](#), 94 Cornell L. Rev. 341, 378 (2009). In response to Professor Teachout's analysis, see, **Seth Barrett Tillman**, [Citizens United and the Scope of Professor Teachout's Anti-Corruption Principle](#), 107 Nw. U. L. Rev. 399 (2012), arguing that Professor Teachout's historical argument is incorrect.

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CONLAW § 20.51(b)(v)(2)

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