

Montana Chamber of Commerce v. Argenbright, U.S. 9th 98-36256 (2000)

(U.S. 9th Circuit of Appeals 98-36256, Opinion issued September 26, 2000)

The court of appeals affirmed judgments of the district court. The court held that the First Amendment does not permit restricting corporate expenditures as a means of expression on public issues presented through a state's ballot initiative process.

In *First National Bank of Boston v. Bellotti*, 435 U.S. 765(1978), the Supreme Court struck down as violative of the First Amendment a state statute limiting corporate contributions or expenditures in the ballot-issue process (initiatives or referenda), made for the purpose of influencing or affecting the vote on any question submitted to the electorate, other than one materially affecting the property, business, or assets of the corporation. The invalidated statute had also provided that no issue submitted to the voters that solely concerned individual taxation issues could be deemed to affect a corporation's property, business, or assets.

However, the Court ruled in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) that a state statutory restriction on independent corporate expenditures in connection with candidate elections was permissible, when the statute permitted corporations to make such expenditures from segregated funds used solely for political purposes, and the state justified the burden on corporations' freedom of speech as a means of avoiding the corrosive and distorting effects of huge aggregations of corporate wealth that have little correlation to the public's support for the corporations' political ideas.

Montana voters approved Initiative 125 (I-125) in November 1996. I-125 prohibited direct corporate spending in connection with ballot issues (other than by nonprofit corporations formed solely for political purposes). The measure allowed a corporation to establish and administer a separate, segregated fund that could solicit contributions from shareholders, employees, or members of the corporation.

In July 1998, I-137 (restricting certain types of mining) was certified for the November ballot. Appellee Montana Mining Association (MMA) and other organizations subject to I-125 sought to delay and then invalidate the election in which Montana's voters approved I-137 on the ground that I-125 unconstitutionally constrained their participation in the election process.

Appellee Montana Chamber of Commerce (MCC) brought a federal declaratory action, alleging that I-125 was unconstitutional, and sought an injunction against its enforcement.

MMA brought suit in September 1998, requesting a preliminary injunction that would either waive I-125 as applied to MMA, or delay a vote on I-137 until after the I-125 case was resolved. The district court consolidated the actions.

On summary judgment, the district court ruled that I-125 restricted core political speech, but concluded that a trial was necessary to determine whether a compelling state interest justified the restriction.

I-125 proponents contended that the effect of corporate spending on Montana initiatives was defeated measures.

Opponents produced evidence indicating that many factors influenced election results, and that the side spending less money won 50 percent of the time. They also showed that the Montana political system was healthy and free of corruption.

In the I-137 phase, MMA showed that I-125 limited mining companies' ability to oppose I-137, and that the measure posed a significant economic threat to its members.

The district court accepted the contentions of the I-125 opponents, ruling that at least as applied, the measure infringed the First Amendment rights of speech and association of those subject to its prohibitions; it was not narrowly tailored to address only the spending of large corporations; requiring corporations to fund ballot-issue campaign speech through segregated funds impermissibly deprived them of their ability to communicate political ideas directly to the electorate; the measure prevented the electorate from being exposed to diverse political viewpoints on matters of public policy; and the proponents' evidence did not establish domination of the initiative process through corporate expenditures. Accordingly, the court concluded that the corporations were entitled to defend their economic interests by using their treasuries to fund their participation in ballot initiative campaigns.

Appellant Ed Argenbright, Montana's Commissioner of Political Practices, appealed from the district court's judgment for MCC, MMA and the other opponents of I-125.

[1] The constitutionality of I-125 came down to whether restricting corporate expenditures in the ballot issue process was controlled by Bellotti, even though I-125 (unlike the statute at issue in Bellotti) permitted corporations to establish segregated funds through which others might contribute.

[2] The risk of corruption perceived in cases involving candidate elections is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. The Constitution protects expression that is eloquent no less than that which is unconvincing.

[3] I-125 was similar to the statutory scheme approved in Austin to the extent that both statutes allowed corporations to set up segregated funds. However, Austin did not turn on this difference from Bellotti as much as it did on the difference between expenditures for candidate elections and ballot issues. Even if Austin could be read as undermining Bellotti, that was for the Supreme Court to say. Austin cited Bellotti and did not overrule it. Bellotti controlled.

[4] I-125 unconstitutionally restricted public discussion in the ballot issue (initiative) process. A restriction so destructive of the right of the public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment. Its enforcement was therefore properly enjoined.

[5] The issue of whether the district court should have delayed or invalidated the I-137 election, together with the question whether MMA's pre-election request for injunctive relief should have been granted, were moot.

[6] Even though there was evidence that I-125 affected MMA's ability to campaign, there was also evidence that it had no substantial impact. And the state had a significant interest in avoiding the costs of a special election. It could not be said that the district court abused its discretion in failing to void the results of the election.

Judge McKeown concurred separately, writing to underscore that First Amendment protection of political contributions is not absolute, and that the articulation of a compelling state interest for restrictions on corporate spending in ballot issue elections could produce a different result.

Judge Hawkins dissented, concluding that Austin supported I-125's validity because Montana's initiative provided for corporate spending through a segregated fund.