



## **Simulated Judgment on Campaign Finance in the Constitutional Court of the Republic of Azania**

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### **Abstract**

*This article comes in the form of a simulated judgment of a fictional constitutional court. Its focus is on the scope of liberty in the distribution of private sector funding in the contentious democratic political process. The judgment is triggered by rulings of the United States Supreme Court, which seeks to limit the power of the legislature to constrain campaign expenditures. In its recent judgments, the Supreme Court has equated political liberty as a device to permit unconstrained political spending. This simulated judgment is drawn from the constitution of South Africa, which has provisions functionally similar to related provisions in the U.S. Constitution. This "Azanian" Constitutional Court is set the task of interpreting its own provisions in the light of the U.S. Supreme Court's determination of provisions similar to its own. This judgment in reviewing the central elements of the American Court considers that the approach of the American Court undermines democracy and promotes plutocracy. The promotion and defense of democracy are, as a global matter, intricately tied to the principles of good governance, which include responsibility, accountability, and transparency. Plutocracy is the antithesis of good governance and as a global norm should be rejected.*

### **Introduction to a Simulated Judgment in the Supreme Constitutional Court of the Republic of Azania**

This simulated judgment is written from the perspective of juriconsults reviewing the jurisprudence of comparative constitutional law concerning the right of the legislature to enact legislation that seeks to control, regulate, and limit contributions from private-sector actors to those who are campaigning for electoral office. The developed constitutional jurisprudence in this area has been significantly defined by two recent Supreme Court decisions of the United States. The Constitutional Court of Azania has both constitutional provisions and legislative enactments that are remarkably similar to the constitutional and legislative provisions of the law of the United States. Thus, the Supreme Court of Azania, although facing a paucity of judge-made law, has the benefit of reviewing its own law and Constitution via an examination and appraisal of the example set in the Supreme Court of the United States.

## Supreme Constitutional Court of the Republic of Azania

*October Term 2014*

### *Appeal from the High Court of the Cape of Good Hope*

Chief Justice announced the judgment of the Court. The judgment is unanimously joined by the other six Justices.

The Constitution of the Republic of Azania in its Preamble indicates that the Constitution of this Nation was drafted and adopted in order to “lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.”\* Chapter One of the Constitution expresses several of the founding provisions of the Constitution. Chapter One Article Id states “universal adult suffrage, a national common voters roll, regular elections, and a multi-party system of democratic government, to ensure accountability, responsiveness and openness”† are among the foundational values of the new constitutional order. Chapter Two of the Constitution codifies the Bill of Rights of the Nation. The cornerstone of a democratic political culture must ensure and advance “the democratic values of human dignity, equality and freedom.”‡ The Constitution stipulates that “the state must respect, protect, promote and fulfill the rights in the Bill of Rights.”§ The scope of the application of the Bill of Rights is that it “applies to all law, and binds the legislature, the executive, the judiciary and all the organs of the state.”¶ The scope of the Bill of Rights inter alia binds both natural and juristic persons, taking into account the specific circumstances of each context.\*\* The Constitution also clarifies the position of juristic persons under the Bill of Rights: “a juristic person is entitled to rights in the Bill of Rights but only to the extent required by the nature of the rights and the nature of that juristic person.”†† In dealing with the interpretation of the Bill of Rights, the Constitution provides additional guidance. It “must promote the values that underlie an open and democratic society.”‡‡ In order to interpret the Constitution, the interpreter must consider international law. The interpreter may as well consider foreign law.§§

Because freedom of expression is a foundational value of all open and democratic societies, the Azanian Constitution Article XVI stipulates that “everyone has a right to freedom of expression.”¶¶ This includes the following:

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research

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\* S.A Constitution, Preamble

† *ibid.*, art. 1d

‡ *ibid.*, art. 7, sec. 1, cl. 1.

§ *ibid.*, art. 7 sec. 2.

¶ *ibid.*, art. 8, sec. 1.

\*\* *ibid.*, art. 8, sec. 2.

†† *ibid.*, art. 8, sec. 4.

‡‡ *ibid.*, art. 39, sec. 1a.

§§ *ibid.*, art. 39, sec 1b and 1c.

¶¶ *ibid.*, art. 16, sec. 1.

Additionally, the Constitution clarifies the scope of freedom of association: “Everyone has the right to freedom of association.”<sup>\*</sup> This implicates the political rights listed in the Constitution:<sup>†</sup>

1. Every citizen is free to make political choices, which includes the right-
  - (a) to form a political party;
  - (b) to participate in the activities of, or recruit members for, a political party; and
  - (c) to campaign for a political party or cause.

The Constitution does not specify the precise coordination of these rights in actual practice. In particular, it does not indicate how these rights are to be expressed in terms of the process of funding the promotion and defense of these rights. In this sense, our Constitutional scheme is somewhat silent about precisely how this is to be done, what standards are to govern it, and precisely what the scope of the prescriptive power of the State is to legislate standards to ensure that the foundational values of an open and democratic society are enhanced and not undermined.

The central problem posed for the process of ensuring the integrity of the electoral process is the problem that in an open society which has a significant private sector for the production of wealth and capital, that segment which monopolizes and controls the wealth-generating process may use its wealth and capital assets to support particular candidates in the political competition for electoral success. This led the United States Congress, in a bipartisan initiative,<sup>‡</sup> to begin the process of limiting campaign contributions so that the political process is not swamped by the wealthy contributions of a few members of the electorate, a process that may therefore diminish the competitive capacity and weight of the average citizen voter in the political campaign arena. In the U.S. system, there are limits to what an individual may contribute to a particular candidate.<sup>§</sup> That same individual, however, can also channel unlimited funds through a Super PAC that supports that same candidate or party.<sup>¶</sup>

In a recently decided case,<sup>\*\*</sup> the Republican National Committee and a citizen of Alabama, Shaun McCutcheon challenged a law that limited an individual’s aggregate campaign contributions to \$48,000.<sup>††</sup> McCutcheon was simply claiming that he could provide a donation of \$2,600 [the base limit] to as many candidates for election as he chose. In short, his money provided him with a form of political influence and communication that could not be matched by poorer sections of the community. The fundamental principle here is that the freedom of speech and communication in the American Bill of Rights restricts campaign contribution limits. Since we have a similar provision in our Bill of Rights and similar limitations on

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\* *ibid.*, art. 18.

† *ibid.*, art. 19, sec. 1.

‡ *An Act to Amend the Federal Election Campaign Act of 1971 to Provide Bipartisan Campaign Reform*, Public Law 107-155, *U.S. Statutes at Large* 116 (2002): 81-116, also known as the Bipartisan Campaign Reform Act or the McCain-Feingold Act.

§ For a complete list of all current campaign contribution limits, see the Federal Election Commission’s website: “Contribution Limits 2013-2014,” <http://www.fec.gov/pages/brochures/contriblimits.shtml>

¶ The notion of a Super PAC emerged after United States Court of Appeals for the District of Columbia Circuit decided *Speechnow.org, et al. v Federal Election Commission*, U.S. 2 (2010). The Court ruled to invalidate the \$5,000 base limit previously imposed on individual contributions to independent political committees.

\*\* *McCutcheon et al., v Federal Election Commission*, 572 U.S. 1 (2013).

†† The law in question was a section of the Bipartisan Campaign Reform Act.

campaign expenditures we are facing roughly the same question: whether Article XVI of our Constitution should be given a similar interpretation as the First Amendment has been given in the American Constitution. Our Bill of Rights is subject to Article XXXVI, which stipulates:\*

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
  - (a) the nature of the right;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and
  - (e) less restrictive means to achieve the purpose.
2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Our judgment will mainly focus on two decided cases from the United States Supreme Court because these cases are very similar to the appeals before this Court. The first of these appeals focuses on the role of corporations engaging in the expenditure of corporate funds in the electoral activity currently in the state.<sup>†</sup> The second appeal deals with the mechanisms by which legislation placing limits on aggregate political expenditures is constitutionally challenged. The United States Supreme Court, in handling these issues of corporate identity, expenditures, and aggregate limitations, has ruled that matters fall squarely within the reach of the First Amendment to the United States Constitution.<sup>‡,§</sup> In approaching the process of adjudication here the Supreme Court of the United States has developed extra-constitutional tests [words not found in the Constitution] to guide its interpretation of the proper constitutional reach of the First Amendment. Since the First Amendment represents a fundamental constitutional right, the Court provides a level of strict scrutiny over the legislation that seeks to control and regulate it. This places a burden on the legislative drafter to show that any legislation impacting upon the freedom of speech represents a compelling state interest. If the court finds that this interest is indeed compelling, the legislation is valid. If it finds that the reason for the legislation does not represent a compelling governmental interest it will be struck down.

The United States Supreme Court's decision in *Citizens United v. FEC* overturned the provision of the 2002 Bipartisan Campaign Reform Act prohibiting corporations from engaging in "electioneering communication,"<sup>¶</sup> including the funding of political advertisements to be aired in the 30 days before a federal election. The Court ruled that to restrict the political

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\* S.A. Constitution, art. 36, sec. 1 and 2.

† On the theories of the nature of corporate personality see George Whitecross Paton, "Types of Incorporation: § 90 Theories of the Nature of Corporate Personality", in *A Textbook of Jurisprudence* (London: Oxford University Press, 1967) 365-376, discussing fiction theory, concession theory, bracket theory, and purpose theory.

‡ *McCutcheon v FEC*, 3.

§ *Citizens United v Federal Election Commission*, 588 U.S. 1 (2010), 3.

¶ *Bipartisan Campaign Reform Act*, § 203.

spending of corporations based on their identity as juridical persons was in violation of their First Amendment rights.\* In short, the Federal Government could not establish a compelling governmental interest prohibiting corporations from dispersing funds in federal elections. It would be useful to provide some further contextual background to the effects of this case on the American electoral process. The net effect of this precedent was that nearly \$1 billion in new spending money emerged in the Federal elections.<sup>1</sup> Super PACs became a routine part of the vocabulary of National elections.<sup>†</sup> Additionally, non-profit corporations could contribute to campaigns through Super PACs without disclosing the source of the funds they were contributing.<sup>‡</sup> For example, the American Crossroads PAC and Crossroads Grassroots Policy Strategies Non-Profits created by political operative Karl Rove raised \$123 million of which 62% was undisclosed.<sup>§¶</sup> The Court’s ruling also influenced non-federal elections. “Laws restricting spending by outside interest groups in elections were invalidated in 24 states, extending the impact of the high court decision to races for governor, state supreme court and beyond.”\*\*\*

*“Current reports indicate that the official total of funds expended on lobbying activity in Washington is \$3.2 billion, however, investigative reporting indicates that the real figure is vastly in excess of this and is estimated to be closer to \$9 billion.”*

The evidence connecting super PACs and their donors appears in the following table:<sup>††</sup>

**Table 1: Super PACs and their donors**

Rank	Name	Total Given	Ideology
1	Sheldon Adelson & family	\$93.3 million	Republican
2	Harold Simmons & wife, companies	\$30.9 million	Republican
3	Bob Perry	\$23.5 million	Republican
4	Fred Eychaner	\$14.1 million	Democratic
5	Joe Ricketts	\$13.1 million	Republican
6	William S. Rose (Specialty Group)	\$12.1 million	Republican
7	United Auto Workers	\$11.8 million	Democratic
8	National Education Association	\$10.8 million	Democratic
9	Michael Bloomberg	\$10 million	Independent
10	Republican Governors Association	\$9.8 million	Republican

\* *Citizens United v FEC*, 50. See footnote \* on this page for further discussion.

† See footnote ¶ on page 23.

‡ Michael Beckel, “Nonprofits outspent super PACs in 2010, trend may continue” *ibid.*, Part III: *Nonprofits, the stealth super PACs*, 56.

§ These startling numbers certainly call into doubt Chief Judge Sentelle’s statement that “contributions to groups that make only independent expenditures cannot corrupt or create the appearance of corruption.” *Speechnow.org v FEC*, 14.

¶ Michael Beckel, “Crossroads political machine funded mostly by secret donors” in *Consider the Source, Part II: Super PACs crash the parties*, 13.

\*\* “Introduction” *ibid.*, Part I: *Big bucks flood 2012 election*, 5.

†† *ibid.*, 6-7.

Rank	Name	Total Given	Ideology
11	James H. Simons	\$9.6 million	Democratic
12	AFSCME	\$8.2 million	Democratic
13	AFL-CIO	\$7.4 million	Democratic
14	Robert B. Rowling	\$6.1 million	Republican
15	American Federation of Teachers	\$5.8 million	Democratic
16	Robert Mercer	\$5.5 million	Republican
17	Steve and Amber Mostyn	\$5.2 million	Democratic
18	George Soros* & family	\$5.1 million	Democratic
19	William Koch	\$4.8 million	Republican
20	Peter Thiel	\$4.7 million	Republican
21	SEIU	\$4.4 million	Democratic
21	Joe Craft	\$4.4 million	Republican
23	John Childs	\$4.2 million	Republican
23	Plumbers and Pipefitters Union	\$4.2 million	Democratic
25	Jerry Perenchio	\$4.1 million	Republican

When we look at these numbers, which are payments to influence the elections, it is worthwhile to consider these financial facts in the context of the aggregate funds spent directly to influence policymakers in Washington. This is of course to consider the financial foundations of Washington's lobby industry. Current reports indicate that the official total of funds expended on lobbying activity in Washington is \$3.2 billion, however, investigative reporting indicates that the real figure is vastly in excess of this and is estimated to be closer to \$9 billion.<sup>2</sup> The major lobbyists include Public Relations Firms, Law Firms, In-House and Corporate Public Relations Departments, Trade Associations and Policy Advocates representing interests such as the natural gas, petroleum, clean coal, food marketing, aerospace, film, biotechnology, healthcare industries, the financial sector, and specific corporations and corporate interests, for example TransCanada's Keystone XL Pipeline, Apple, Science Applications International Corporation (SAIC), and Monsanto.\* The fact that there is a \$9 billion slush fund to fuel and disperse these funds in the Washington arena of political action signals that as a Constitutional matter it is inappropriate to confuse the idea of the unlimited diffusion of cash into the political process with politics as usual. It is critical that as a matter of constitutional adjudication a Court of Law brings a sense of serious contextual realism to its process of authoritative and controlling decision-making. More importantly, from a juridical point of view these vast infusions of private-sector wealth into the political process suggest a reallocation of fundamental power in the body politic from democracy to the financial elite.<sup>†</sup>

*“The Supreme Court of the United States has a focus on the interrelationship of wealth and power that is vastly astigmatic.”*

\* *ibid.*, 12-13.

† See *infra* footnote on page 28.

By broadening the contextual focus of the Court's concern for the role that wealth plays in the electoral and legislative process in the United States we conclude that the Supreme Court of the United States has a focus on the interrelationship of wealth and power that is vastly astigmatic. A central concern of the American legislature has been to protect the democratic foundations of the American Republic from being swallowed up by the overwhelming infusion of money meant to influence the political process and possibly dominate it.\* The interest of the American Congress therefore has been to protect the democracy of the Republic. The Supreme Court's inversion of the compelling governmental interest in the protection of democracy from the overreaching influence of a plutocratic impulse is a conclusion that is not necessarily warranted by the text and the values behind the American Constitution. It is certainly not warranted under the text and values of the Azanian Constitution.

Our own Constitution provides us with a form of scrutiny that in principle is not radically different from the form of scrutiny engaged in by the American Court though our Constitution is a bit more explicit in the interpretive guidance it gives. For example, our Constitution makes clear that there are limitations to our Bill of Rights. However, those limitations must be ones that are "reasonable and justifiable in an open, democratic society."<sup>†</sup> These are important guidelines relating to the democratic culture and its constitutional underpinnings, which are not as clearly enunciated in the American Constitution. It is with this background that we can examine in a more contextually sensitive way the importance of the freedom of speech and expression and the importance of legislation which secure that the freedom of speech or expression will not be so extended as to confuse the notion of a right with the notion of political license. Our legislation must also be examined in terms of "the nature and extent of the limitation"<sup>‡</sup> on corporate expenditure or aggregate expenditure in the electoral process. Are these limitations restrictions of a fundamental right or are these limitations the preservation of approximate fairness and equality for all citizens participating in the political process? In short, if you are a schoolteacher, a plumber, a garbage worker, a student, or a minority, the flood of funds targeting the interests of the few may drown out your ability to express yourself politically. Our Constitution then provides more structured guidelines in order to make the context more relevant to the process of adjudication.

The U.S. Supreme Court takes the view that money and speech are the same thing.<sup>§</sup> This is tortured logic. If such a position were taken as a Constitutional truism then those with fat bank wallets can ensure themselves an even fatter level of participation and influence in politics. And if this is entrenched the United States could well be on its way of evolving from democracy to plutocracy.<sup>¶</sup> The approach of the Supreme Court of the United States is

\* This concern has been the driving force behind a number of congressional acts in the last century. The Tillman Act of 1907 (34 Stat. 864, now 18 U.S.C. § 610), the 1910 Federal Corrupt Practices Act (2 U.S.C. § 241), the Hatch Act of 1939 (5 U.S.C. §§ 7324-7327), the Labor Management Relations Act of 1947 (Pub.L. 80-101, 61 Stat. 136), the Federal Election Campaign Act of 1971 (Pub.L. 92-225, 86 Stat. 3), and the 1975 creation of the Federal Election Commission, and the recent Bipartisan Campaign Reform Act were all enacted for the purpose of regulating the influence of money on the federal government.

† S.A. Constitution, art. 36, sec. 1 and 2.

‡ *ibid.*, art. 36, sec. 1c.

§ This precedent was set in 1976, when the Supreme Court ruled that "a restriction on the amount of money a person or group can spend on political communication during a campaign 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. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money." *Buckley v Valeo*, 424 U.S. 1 (1976), 19.

¶ Recent evidence suggests that this process has already begun. In their soon to be published "Testing Theories of American Politics," researchers from Princeton and Northwestern analyze the statistical influence of various groups (the average voter, economic elites, and corporate and mass-based interest groups) in American politics and compared their findings to prevailing political theories (majoritarian electoral democracy, economic elite domination, majoritarian pluralism and biased pluralism). Their conclusion, found on pages 28 and 29 of the final pre-production draft, is perhaps less startling than

to ascribe to this plutocratic trend a single narrow possibility of limitation. This legislation must be tailored directly and specifically to the condition of political bribery.\* This assumes that the giver is naïve about influence and can only expect something if he or she specifically requests a special political favor or vote, in return for the money. No moneyed citizen, if he had the brains to make that money, would make such an explicit request, one which would be criminal and land him in jail. This is therefore a vastly unrealistic standard by which to measure the unstated but undoubtedly clear expectations involved in the giving and receiving of vast sums of money. It is notoriously obvious there will be some form of connectivity between the general and specific interests of the donor and the dependency of the recipient or his agents and affiliates. In politics, there is nothing for nothing. In short, as indicated earlier, the infusion of extraordinary amounts of cash into the political process results in the disproportionate influence of those that command the wealth. Consequently, we have an allocation of power disproportionately skewed in favor of the wealthy elite at the expense of the people.

In the McCutcheon case the Roberts Court's apology for unlimited spending contributions is that limits on spending "unnecessar[ily] abridg[e]" First Amendment rights.† In short, the wealthy have a license to spend as much as they want in order to communicate their political ideas, and interests. The First Amendment's protection here serves to encourage broader political participation. Any legislation that seeks to limit this cannot be seen to advance a legitimate governmental objective. The only case in which there would be a legitimate governmental objective would be to control corruption. But spending large amounts of money does not necessarily imply corruption. The corruption the U.S. Court has in mind is *quid pro quo* bribery. This is so narrow a definition as to be humorous when we consider that buying and selling politicians for influence and access at least have the "appearance of corruption."‡ In our view, we see the prohibition represented by aggregate limits to be a reasonable tool to prevent bribery and/or corruption of the political process and to be a restriction on the gravitation of our democracy to a plutocracy.

The Constitutional Court of Azania completely rejects the unrealism of the American Supreme Court's definition of corruption as limited by its notion of *quid pro quo* bribery. What is missing from this analysis is that the United States is a democracy and protecting the integrity of the democratic process from being purchased by the few at the expense of the many is not only a misunderstanding of American democracy but clearly this reasoning is completely inappropriate with regard to our conception of fundamental rights in the political process.

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it should be:

The estimated impact of average citizens' preferences drops precipitously, to a non-significant, near-zero level. Clearly the median citizen or "median voter" at the heart of theories of Majoritarian Electoral Democracy does not do well when put up against economic elites and organized interest groups. The chief predictions of pure theories of Majoritarian Electoral Democracy can be decisively rejected. Not only do ordinary citizens not have uniquely substantial power over policy decisions; they have little or no independent influence on policy at all. By contrast, economic elites are estimated to have a quite substantial, highly significant, independent impact on policy... Similarly, organized interest groups... are found to have substantial independent influence on policy... These results suggest that reality is best captured by mixed theories in which both individual economic elites and organized interest groups (including corporations, largely owned and controlled by wealthy elites) play a substantial part in affecting public policy, but the general public has little or no independent influence.

Martin Gilens and Benjamin I. Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," upcoming article in *Perspectives on Politics* (2014).

\* This view is summed up well by the statement made in the Opinion of the Court that "the fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." *Citizens United v FEC*, 43.

† *McCutcheon v FEC*, 30, quoting *Buckley v Valeo*, 25.

‡ The Supreme Court's opinion on the appearance of corruption is, inexplicably to many, the exact opposite: that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *McCutcheon v FEC*, 5; italics author's own.



With regard to corporations being treated as flesh and blood citizens there is much here that is problematic. A corporation is an artificial person. It is a juristic person. It has rights and it has obligations in terms of its charter of incorporation. Human beings are not given rights by some mythical charter of incorporation. Clearly, there's a vast difference between the civil and political rights of a flesh and blood person and the rights constructed for the limited purposes of the juristic life of a corporation. As our law says we must consider the nature of these participants.\* What the Court in the United States is not taking into account is the widespread discontent with corporate abuse; many theorists in the United States consider that corporate reform is overdue.<sup>3</sup> Before we give corporations the complete rights of flesh and blood citizens we had better take corporate reform seriously. We summarize five publicized notorious principles that are proposed for corporate reform:<sup>†</sup>

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*“The United States is speeding up its constitutional train without regard to the fact that it is on the wrong track, headed in the wrong direction, and will undermine democracy via its confusions between freedom and license in expression which can only lead to the tragedy of plutocracy.”*

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1. Limit the power of top executives and financial decision-makers who may have the power to use the corporation for inappropriate ends and for personal gain;
2. Allow institutional investors, such as pension fund managers, to nominate independent directors to the boards of the corporations in which they are major investors;
3. Implement an aggressive program to make employees on all levels stakeholders in the corporation itself, thus giving them an interest in the success of the corporation; corporations may achieve this by awarding stock options to employees as bonuses or rewards for excellent company performance;
4. Give blue and white collar employees a direct voice in corporate decision-making to represent the perspectives of professional and nonprofessional employees in the business to improve the objectivity and quality of corporate decision-making;
5. Reduce salary packages and stock options for top-level executives to avoid artificial inflation of the company's share price; stock options may remain part of an executive incentive package, but the corporation should limit their magnitude to protect and enhance corporate interest.

When we examine the juristic identity of corporate entities, we should be cautious about extending to them all the benefits of the Bill of Rights, which may be inappropriate to the juristic purposes for which they were created. Moreover, the scope of corporate privilege and license is itself, at least in the United States, a contested matter. It would have been more appropriate for the American Court to have reviewed the concerns of responsible theorists about the need for corporate reform before giving them a blank check to preempt the political process. This Court is aware of these concerns and would be reluctant to underwrite the complete freedom to flood the political arena with corporate funds to advance corporate interests.

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\* S.A Constitution, art. 8, sec. 4.

† *ibid.*, 446.

At the very least, it is important for us to consider the criticisms that have been made about the possible abuse of corporate personality and capacity.

In 1907, The Wall Street Journal captured the essence of the Theodore Roosevelt era. “He was fighting gross and corrupt extravagance, the misuse of swollen fortunes, the indifference to law, the growth of graft, the abuses of corporate power.”<sup>4</sup> Roosevelt’s concern for the capacity of the wealthy to abuse their power for unsavory political ends is captured in this excerpt from one of his letters:<sup>\*</sup>

*The policies for which I stand have come to stay. Not only will I not change them, but in their essence they will not be changed by any man that comes after me, unless the reactionaries should have their way... I am amused by the shortsighted folly of the very wealthy men and ... how large a proportion of them stand for what is fundamentally corrupt and dishonest. Every year that I have lived has made me a firmer believer in the plain people- in the men who gave Abraham Lincoln his strength- and has made me feel the distrust of the over educated dilettante type and, above all of... the plutocratic type.*

We decline to follow the example of the Supreme Court of the United States in the case of collapsing juristic identity into normal flesh and blood personal identity. We decline to follow the decision of the Supreme Court of the United States in striking down reasonable and justifiable aggregate limits on campaign expenditures. Indeed, we believe that the United States is speeding up its constitutional train without regard to the fact that it is on the wrong track, headed in the wrong direction, and will undermine democracy via its confusions between freedom and license in expression which can only lead to the tragedy of plutocracy. This is a path we decline to follow.

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4. Aida D. Donald, *Lion in the White House: A Life of Theodore Roosevelt* (New York: Basic Books, 2007), 221.

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<sup>\*</sup> *ibid.*