

1 government when it is acting to prohibit, particularly
2 when it is acting to criminalize, speech that is at the
3 very core of the First Amendment has a heavy burden to
4 prove that there is a compelling governmental interest
5 that -- that justifies that prohibition and that the
6 regulation adopted, in this case a criminal statute, is
7 the most narrowly tailored necessary to accomplish that
8 compelling governmental interest.

9 JUSTICE GINSBURG: Mr. Olson, are you taking
10 the position that there is no difference in the First
11 Amendment rights of an individual? A corporation, after
12 all, is not endowed by its creator with inalienable
13 rights. So is there any distinction that Congress could
14 draw between corporations and natural human beings for
15 purposes of campaign finance?

16 MR. OLSON: What the Court has said in the
17 First Amendment context, *New York Times v. Sullivan*,
18 *Rose Jean v. Associated Press*, and over and over again,
19 is that corporations are persons entitled to protection
20 under the First Amendment.

21 JUSTICE GINSBURG: Would that include --

22 MR. OLSON: Now, Justice --

23 JUSTICE GINSBURG: Would that include
24 today's mega-corporations, where many of the investors
25 may be foreign individuals or entities?

1 MR. OLSON: The Court in the past has made
2 no distinction based upon the nature of the entity that
3 might own a share of a corporation.

4 JUSTICE GINSBURG: Own many shares?

5 MR. OLSON: Pardon?

6 JUSTICE GINSBURG: Nowadays there are
7 foreign interests, even foreign governments, that own
8 not one share but a goodly number of shares.

9 MR. OLSON: I submit that the Court's
10 decisions in connection with the First Amendment and
11 corporations have in the past made no such distinction.
12 However --

13 JUSTICE GINSBURG: Could they in your view,
14 in the view that you are putting forth, that there is no
15 distinction between an individual and a corporation for
16 First Amendment purposes, then any mega-corporation,
17 even -- even if most of the investors are from abroad,
18 Congress could not limit their spending?

19 MR. OLSON: I'm not -- I'm not saying that,
20 Justice Ginsburg. I'm saying that the First Amendment
21 applies. Then the next step is to determine whether
22 Congress and the government has established a compelling
23 governmental interest and a narrowly tailored remedy to
24 that interest. If the Congress -- and there is no
25 record of that in this case of which I am aware.