recognizes a rolling easement on beachfront real property.[12] Emphasizing the "fundamental, natural, and inherent" nature of rights associated with land ownership,[13] the Texas Supreme Court ruled that state law did not automatically transform private beaches into public ones after such a storm event. The right to exclude others from one's property is one of the most important rights of property owners, and the state may only take it away through eminent domain with just compensation, an appropriate use of state police power, legally established easements, or other pre-existing limitations on rights of real-property owners that have existed "since time immemorial."[14]

The court found that none of these were present.[15] It rejected the state's argument that when there is avulsion old easements "roll" with the vegetation line onto adjacent property where no easement had ever been established.[16] The court quoted Justice Holmes: "[A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."[17] "[I]t does not follow," the court added, "that the public interest in the use of privately owned dry beach is greater than a private property owner's right to exclude others from her land when no easement exists on that land."[18]

The court held that although real-property owners were warned that the state may use the OBA to try to enforce an easement on their property as the line of vegetation fluctuated, this did not displace the owners' right to exclude, which was one of the rights the owners purchased with the land.[19] This point was reinforced by the Texas Legislature's 1969 Interim Beach Study

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Supreme Court Reaffirms Its Holding from *Citizens United*

by Edward Greim & Justin Whitworth

In denying a recent petition for certiorari and summarily reversing a decision of the Montana Supreme Court, the United States Supreme Court adhered to principles of stare decisis and reaffirmed its 2010 decision in *Citizens United v. Federal Election Commission* ("*Citizens United*"), which held that corporations and labor unions' independent spending for political campaigns enjoys First Amendment free-speech protection.[1] The Montana Supreme Court had upheld a state law that prohibited corporate political expenditures, reasoning that *Citizens United* did not apply in Montana because of the state's purportedly distinctive history of its "political system being corrupted by corporate interests."[2] The United States Supreme Court disagreed, summarily reversing without granting certiorari.[3]

In a brief per curiam decision opinion joined by five Justices, the Court framed the issue as "whether the holding of *Citizens United* applies to the Montana state law."[4] Without hesitation, the Court answered that "[t]here can be no serious doubt that it does."[5] The Court found Montana's arguments in support of upholding its law to be unoriginal and unconvincing.[6] As the Court held in *Citizens United*, there is little uncertainty that independent corporate political spending "does not give rise to corruption or the appearance of corruption."[7]

Justices Ginsburg, Sotomayor, and Kagan joined the dissenting opinion authored by Justice Breyer, which expressed a strong desire to grant certiorari and reevaluate *Citizens United*.[8] Moreover, Justice Breyer found that, even if he agreed with the holding in *Citizens United*, the Montana state law should not be struck down because of the state court's finding that "independent expenditures by corporations did in fact lead to corruption or the appearance of corruption in Montana."[9] Nevertheless, Justice Breyer ultimately decided that it was appropriate to deny the petition because it was apparent to him from the per curiam opinion that *Citizens United* would not be overturned.[10]

Critics of the Court's 2010 decision had hoped that the Justices would "reconcile their sweeping statement of free speech principles in *Citizens United* with the real-world facts" in Montana and throughout the country that allegedly show that corporate independent expenditures do create corruption.[11] Yet the *Citizens United* majority had clearly grappled with and disposed of a wide array of arguments and purported evidence of "corruption," making it clear in a lengthy and reasoned decision that its rationale did not rest merely on the fleeting nature of the evidence before it. It is clear that the Court did not believe that Montana's history presented either the quality or quantum of evidence that would have justified a close reexamination—let alone a complete reversal—of such a recent and exhaustively considered decision.

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Endnotes

1 Citizens United v. Fed. Election Comm'n, 558 U.S. 50 (2010).

2 Adam Liptak, *Court Declines to Revisit Its* Citizens United *Decision*, N.Y. Times, June 25, 2012.

3 Am. Tradition P'ship, Inc. v. Bullock, No. 11A762 (U.S. 2012).

4 *Id.*

5 *Id.*

6 *Id.* ("Montana's arguments in support of the judgment below either were already rejected in *Citizens United*, or fail to meaningfully distinguish that case.").

7 Citizens United v. Fed. Election Comm'n, 558 U.S. 50 (2010).

8 *Am. Tradition P'ship*, No. 11A762.

9 *Id.*

10 *Id.*

11 *Supreme Court Reverses Anti*-Citizens United *Ruling From Montana*, Huffington Post, June 25, 2012.

Pennsylvania Supreme Court Excludes *Any Exposure* Theory in Asbestos and Toxic-Tort Litigation

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be considered in trying to estimate the relative effects of different exposures."[12] The court also took issue with Dr. Maddox's "extrapolation down" technique under which he relied on studies showing disease at high exposures to support his opinion that the same thing would occur at low exposures.[13]

The court ultimately concluded that the *any exposure* theory of Dr. Maddox was incompatible with causation rules under Pennsylvania law. The court explained that Dr. Maddox's *any exposure* theory is unable to support a finding of causation because "one cannot simultaneously maintain that a single fiber among millions is *substantially* causative, while also conceding that a disease is dose responsive."[14] The court described this position as a "fiction" that would subject defendants to full joint-and-several liability for injuries, even in cases where exposure to a defendant's product could be classified as minimal in relation to other exposures.[15] Because of the internal inconsistencies and large analytical gaps within Dr. Maddox's testimony, the court unanimously held that his opinion was unreliable and Judge Colville did not abuse his discretion in excluding these opinions during a *Frye* hearing.[16]

IV. The Significance of the Pennsylvania Decision

From a national perspective, the Pennsylvania Supreme Court joins a number of courts in holding that the *any exposure* theory is either inadmissible under rules regarding expert testimony, or insufficient to prove causation as a matter of law. The Supreme Court of Texas, the Sixth Circuit Court of Appeals, and an array of lower state and federal court decisions have concluded that the theory is not scientifically sound.[17] These decisions in some ways are not particularly novel, in that they require plaintiffs in asbestos cases only to prove what must be shown in any other toxic-tort case—that the plaintiff experienced a sufficient dose of a toxic substance to cause the alleged disease. They are significant, however, in rejecting the primary basis for assertion of causation in many, if not most, asbestos cases on dockets today.

Pennsylvania itself had in fact been something of a battleground state, due to the competing decisions of Judge Colville and several other trial judges who had rejected the theory, and the clashing decision of the intermediate court declaring it acceptable. The *Betz* decision is thus also critical for Pennsylvania asbestos and toxic-tort cases. Pennsylvania law is now clear—experts in key asbestos dockets such as Philadelphia can no longer claim that any asbestos exposure is enough for causation. The asbestos docket in Texas changed dramatically after that state's supreme court began requiring proof of dose and causation in the 2007 *Borg-Warner* opinion. If Pennsylvania trial courts apply the ruling accurately, the result will likely be a significant reduction in the Pennsylvania asbestos docket as well.

The issue continues to be litigated in other jurisdictions, including the United States Ninth Circuit Court of Appeals and Supreme Court of Virginia, both of which have *any exposure* cases pending. A growing number of non-asbestos cases have included assertions of this theory to support causation (e.g., benzene, diacetyl popcorn lung disease, dental cream cases, medical monitoring and groundwater cases), but to date the theory has not gained much traction in non-asbestos