

# Noted.

**WHAT WOULD REHNQUIST DO?** The Supreme Court's gift of constitutionally protected political speech to paper entities in the **Citizens United** case would have elicited a vigorous dissent from the late Chief Justice **William Rehnquist** for a simple and compelling reason: he was a conservative. As a conservative, he would have agreed with dissenting Justice **John Paul Stevens** that the decision "represents a radical change in the law." This is clear from Rehnquist's mostly forgotten dissent in a 1978 case, *First National Bank of Boston v. Bellotti*.

The issue in *Bellotti* was whether a Massachusetts criminal statute prohibiting spending by banks and businesses to influence voting on referendum proposals violated the First Amendment. In a 5-to-4 ruling, the Court held that the bank indeed had freedom of speech and that it had been violated.

The opinion was written by Justice **Lewis Powell**, who found support in *Santa Clara County v. Southern Pacific Railroad*. In that infamous 1886 case, Chief Justice **Morrison Waite** announced, "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of the opinion that it does." Ratified only eighteen years earlier, the amendment defines a citizen as a person "born" or "naturalized" in the United States. That's why *Santa Clara* was ultimately judicial activism. Yet putative conservatives who regularly denounce *Roe v. Wade* reliably ignore it.

In his *Bellotti* dissent, Rehnquist noted approvingly that Congress and thirty-one state legislatures "have concluded that restrictions upon the political activity of business corporations are both politically desirable and constitutionally permissible." He went on to warn, "It might reasonably be concluded that those properties [of corporations], so beneficial in the economic sphere, pose special dangers in the political sphere."

Rehnquist's warning was conservative; the Powell majority's brushoff was radical.

The issue in *Bellotti* is closely related to that which Justice **Anthony Kennedy's** majority contrived to address in *Citizens United*: whether paper entities have, in Rehnquist's words, "a constitutionally protected liberty to engage in political activities." He would have judged the dissenters, routinely described as liberals, to be conservatives. **MORTON MINTZ**

**OBAMA'S NEUTRALITY:** Few fights in Washington will define the way we communicate and participate in democracy better than the current wrangling over net neutrality. The Federal Communications Commission is developing rules that, if crafted correctly, will guarantee that the Internet remains what Columbia Law School professor and Free Press chair **Tim Wu** describes as "a maximally useful public information network [that] aspires to treat all content, sites and platforms equally."

In 2008 candidate **Barack Obama** and most leading Democrats got it, endorsing net neutrality as the First Amendment of the Internet. Now, however, the nation's largest and most influential telecommunications companies have been aggressively, and in some cases effectively, lobbying to weaken the resolve of Democratic members of Congress and Obama's appointees.

Obama pushed back in a February 1 YouTube interview in which citizens submitted questions and then voted on the ones they wanted him to answer. "I'm a big believer in net neutrality," he declared. "I campaigned on this. I continue to be a strong supporter of it. My FCC chairman, **Julius Genachowski**, has indicated that he shares the view that we've got to keep the Internet open, that we don't want to create a bunch of gateways that prevent somebody who doesn't have a lot of money but has a good idea from being able to start their next YouTube or their next Google on the Internet."

Obama didn't stop there. "This is something we're committed to," said the president. "We're getting pushback, obviously, from some of the bigger carriers who would like to be able to charge more fees and extract more money from wealthier customers. But we think that runs counter to the whole spirit of openness that has made the Internet such a powerful engine for not

only economic growth but also for the generation of ideas and creativity."

**JOHN NICHOLS**

**BACK TO DAMASCUS?** Washington has nominated **Robert Ford**, a career Foreign Service officer, as its ambassador to Syria, a post that has been vacant since the United States withdrew its envoy in 2005 to protest alleged Syrian involvement in the assassination of former Lebanese Prime Minister **Rafik Hariri**. (Syria denied any involvement.)

Ford, currently deputy ambassador to Iraq, was ambassador to Algeria from 2006 to 2008. He ran a **Coalition Provisional Authority** office in Najaf in 2003, and from 2004 to 2006 he was a political officer at the US Embassy in Baghdad, where he helped draft Iraq's new Constitution, establish the transitional government and oversee elections in 2005.

The appointment of a career officer who speaks Arabic represents a shift for Obama, who has often chosen well-heeled friends and contributors for ambassadorial posts. According to the **Center for Responsive Politics**, as of November twenty-four nominees were high-profile campaign "bundlers" who corralled more than \$10 million for Obama. About half of all ninety-nine nominees either donated to Obama, other Democratic candidates or the Democratic Party.

Sending Ford to Damascus is part of the administration's effort to back up Obama's fleeting Cairo oratory. The London-based Arabic daily **Al-Sharq Al-Awsat** quoted an unnamed American official saying, "Washington wants to help in launching direct peace negotiations between Syria and Israel in the next few months." But **Joshua Landis**, a regional expert who runs the popular **Syria Comment** blog, is not so sure. "The Syrians I have spoken to are skeptical that [negotiations] can lead to anything but frustration," he said. "Netanyahu is not giving any ground to the Palestinians and there's no reason to expect him to give ground to the Syrians."

Reopening the ambassador's residence is a step, not a solution. After all, last year Obama renewed harsh economic sanctions on Syria that were imposed by **George W. Bush**. And Syria holds the dubious distinction of being Washington's oldest designated state sponsor of terrorism—since 1979. **FREDERICK DEKNATEL**