



RUTGERS LAW RECORD

The Internet Journal of Rutgers School of Law | Newark
www.lawrecord.com

Volume 37

Emerging First Amendment Issues

Spring 2010

Beyond Corporate Speech: Corporate Powers in a Federalist System

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The corporate form is older than the Constitution, the Magna Carta, and, arguably, the Common Law itself.¹ Fundamentally, a corporation exists to do *something* an individual is incapable of, like pooling expansive resources and existing in perpetuity. This *something* has varied over time, but the uniting principle for the past 1,000 years of corporate law has remained constant: the sovereign grants corporate privileges to the extent it favors the public.

In the United States, a peculiar jurisprudence for corporate law has developed under the federalist system. Through organic devolution of power, the States reserve corporate chartering powers, whereas the federal government has constitutionally vested control over interstate commerce² and the power to make all laws necessary and proper to execute constitutional powers.³ This federal authority has evolved to engender the regulatory authority to reach highly localized economic activity.⁴ In this environment, the line of control over economic activity and constitutional liberties is often difficult to define. Because of a maze of economic and legal factors, American law has reached the point where corporations are considered persons for most legal matters.⁵ However, this is inconsistent with the historical perception of the corporation and American law developed thereon.

The Supreme Court's recent decision in *Citizens United v. Federal Election Commission* fell victim to the distractions surrounding the privileges and limitations of the corporate form. As entities chartered by the individual states, the issue of corporate free speech must be addressed through the lens of the Tenth and Fourteenth Amendments before the First Amendment. The chicken or the

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¹ Corporations, such as the Church and Universities, "which have existed as corporations, time whereof the memory of man runneth not to the contrary; and therefore are looked upon in law to be well created." Sir William Blackstone, *Commentaries*, Book I, c. XVIII.

² U.S. Const. art. I, § 8.

³ *Id.*

⁴ See *Wickard v. Filburn*, 317 U.S. 111 (1942).

⁵ See *e.g.*, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

egg runaround presented by both the majority and dissenting opinions discuss First Amendment rights, but fail to account for the fact that a corporation can only exist if a state grants its charter, and this charter grant is contingent upon limits set forth by the State. By ignoring this analysis, the Court degrades the federalist balance inherent in the American corporate form, perpetuates the misunderstanding of corporate personhood, and brands incorporation as a right and not a privilege. A proper analysis of the corporate form and the Constitution's applicability thereto dictates that a corporation's rights are contingent upon that which is given to it by the incorporating state, including political, press, and other protected forms of speech.

I. CORPORATE PERSONHOOD

The *Citizens United* Court has assumed that the First Amendment protects corporations. It does so in four sentences:

The Court has recognized that First Amendment protection extends to corporations. This protection has been extended by explicit holdings to the context of political speech. Under the rationale of these precedents, political speech does not lose First Amendment protection "simply because its source is a corporation." The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not "natural persons."⁶

This statement primarily relies upon *First National Bank of Boston v. Bellotti*, and supports itself through the cases cited by *Bellotti* and eight additional First Amendment cases focused on freedom of the corporate press.⁷ There is no discussion of the Fourteenth Amendment or personal liberties, presumably because of the coverage heeded to these subjects in *Bellotti*.

The majority in *Bellotti* asserted that First Amendment protections extend to corporations and struck down a Massachusetts statute that prohibited corporate political expenditures on referenda issues unrelated to a corporation's property.⁸ To do this, the Court defined the issue strictly as an issue of speech. Justice Powell, writing for the majority, framed the issue:

The court below framed the principal question in this case as whether and to what extent corporations have *First Amendment* rights. We believe that the court posed the wrong question. The Constitution often protects interests broader than those of the party seeking their vindication. The *First Amendment*, in particular, serves significant societal interests. The proper question therefore is not whether corporations "have" *First Amendment* rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether [the statute] abridges expression that the *First Amendment* was meant to protect. We hold that it does.⁹

⁶ *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (U.S. 2010).

⁷ *Id.* at 900-01.

⁸ *Bellotti*, 435 U.S. at 779, 791-92.

⁹ *Id.* at 775-76 (emphasis added).

According to the Court, extending constitutional guarantees to a corporation depends upon “the nature, history, and purpose of the particular constitutional provision.”¹⁰ The Court then skipped an analysis of whether corporations are entitled to free speech guarantees because “[f]reedom of speech and the other freedoms encompassed by the *First Amendment* always have been viewed as fundamental components of the liberty safeguarded by the Due Process clause, and the Court has not identified a separate source for the right when it has been asserted by corporations.”¹¹ This short argument allowed the Court to address the case strictly as a First Amendment issue, which did not require an analysis of alternative sources of First Amendment rights for corporations because “corporations are persons within the meaning of the *Fourteenth Amendment*.”¹² This assertion was based on *Santa Clara County v. Southern Pacific Railroad*, a Reconstruction era corporate Fourteenth Amendment case.

During Reconstruction and into the 20th century, corporations aggressively sought the protections of the Fourteenth Amendment. In fact, only twenty-eight of the first 604 Fourteenth Amendment cases before 1911 involved African-American civil rights.¹³ The Fourteenth Amendment extended the privileges and immunities, due process requirements, and equal protections afforded to all citizens of the United States to all state citizens.¹⁴ Corporate managers, shareholders, and lawyers viewed this as an opportunity to escape State controls by establishing the corporation as a state citizen entitled to the protections of the Bill of Rights as incorporated through the rights extended by the Fourteenth Amendment. The strategy is simple: corporations can act free of restriction if the Constitution requires states to concede charter restrictions.

The Court’s first major decision regarding corporations and the Fourteenth Amendment was *The Slaughter-House Cases*, where local butchers asserted that they were protected by the privileges and immunities granted by the Fourteenth Amendment.¹⁵ The butchers challenged a state law that created a corporation that monopolistically controlled the slaughter industry in and around New Orleans, Louisiana.¹⁶ As a state policing power, slaughterhouse consolidation was held constitutional under the procedural restraints of federalism.¹⁷ This procedural construction of the Fourteenth Amendment emphasized the civil rights purposes of the Amendment – protecting African Americans previously denied the benefits of the Bill of Rights – thereby preventing back

¹⁰ *Id.* at 778 n.14.

¹¹ *Id.* at 780 (emphasis added).

¹² *Id.* at 780 n.15 (citing *Santa Clara County v. Southern Pacific R.R. Co.*, 118 U.S. 394 (1886)).

¹³ Risa Lauren Goluboff, *The Lost Promise of Civil Rights*, Heron & Crane, 21 (2007). Goluboff proffers a C. W. Collins quote from 1912: “It is not the negro but accumulated and organized capital, which now looks to the Fourteenth Amendment for protection from State activity.” *Id.*

¹⁴ U.S. Const. amend. XIV.

¹⁵ *The Slaughter-House Cases*, 83 U.S. 36 (1872).

¹⁶ *Id.* The statute justified the statutory consolidation of slaughterhouses because it curbed the externalities that emerge from an expansive slaughtering industry. Butchers excluded from the slaughterhouse corporation argued, amongst other theories, that the act was unconstitutional under the Fourteenth Amendment because the act violated the privileges and immunities clause. The five to four opinion held that the Fourteenth Amendment extends the privileges and immunities of the federal Constitution for purposes of United States citizenship and not state citizenship.

¹⁷ *Id.* at 82. (“But whatever fluctuations may be seen in the history of public opinion on [federalism] during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held with a steady and an even hand the balance between State and Federal power, and we trust that such may continue to be the history of its relation to that subject so long as it shall have duties to perform which demand of it a construction of the Constitution, or of any of its parts.”)

door access to the privileges and immunities protections of the federal Constitution sought by corporations.¹⁸

The second seminal case for the Fourteenth Amendment and the corporation occurred thirteen years later in *Santa Clara County v. Southern Pacific Railroad*.¹⁹ Seeking equal protection through the Fourteenth Amendment, railroad lawyers argued that a corporation is a “person” entitled to such a right, especially for taxation purposes, because “corporations cannot be separated from the natural persons who compose them.”²⁰ The Court’s decision did not address this aggregation principle. Instead, the Court agreed with the lower court’s nullification based on agency jurisdiction limitations for the tax assessors.²¹ However, the syllabus included an *ultra vires* statement:

One of the points made and discussed at length in the brief of counsel for defendants in error was that “corporations are persons within the meaning of the Fourteenth Amendment to the Constitution of the United States.” Before argument, MR. CHIEF JUSTICE WAITE said: “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 to any person within its jurisdiction the equal protection of the laws *applies* to these corporations. We are all of opinion that it does.”²²

This single statement is considered by many to be the law that conferred personhood upon corporations. Indeed, *Bellotti* cites this case as the source of personal treatment of corporations under the Fourteenth Amendment.²³

The *Citizens United* Court, via *Bellotti*, argues, “political speech of corporations or other associations should [not] be treated differently under the First Amendment simply because such associations are not ‘natural persons.’” Utilizing *Santa Clara* as a source of personhood is perplexing, *ultra vires* issues aside, because the corporate “person” entitled to the Equal Protection Clause and then the Due Process Clause was soon thereafter cutoff from additional constitutional protections because “the liberty protected by the Fourteenth Amendment ‘is the liberty of natural, not artificial persons.’”²⁴ Indeed, the Court in corporate Fourteenth Amendment cases subsequent to *Santa Clara* extended the guarantees afforded to all persons to corporations only where such guarantees are explicit in their corporate charter or implicit as an incidental requirement for the corporation’s existence. This reflects the common law precept of the corporate charter as a contractual agreement and the adaptation of this concept to the Contracts Clause and the subsequent incorporation of Fourteenth Amendment rights granted to a corporation.

II. THE CORPORATE CONTRACT

¹⁸ *Id.*

¹⁹ *Santa Clara*, 118 U.S. 394. California imposed taxes on railroad property at a higher rate than the taxes applicable to non-corporations, which the railroads claimed violated their right to equal protections under the law as citizens of the United States.

²⁰ *San Mateo v. Southern Pac. R.R. Co.*, 116 U.S. 138 (1882).

²¹ *Santa Clara*, 118 U.S. 394.

²² *Id.* at 396 (emphasis added).

²³ *Bellotti*, 435 U.S. at 780 n.15.

²⁴ *Id.* at 822 (Rehnquist, J., dissenting) (quoting *Northwestern Nat. Life Ins. Co. v. Riggs*, 203 U.S. 243, 255 (1906)).

Upon a closer reading of the *Santa Clara* syllabus, the Court did not confer personhood upon corporations nor issue a blanket application of Bill of Rights guarantees; it simply applied the constitutional guarantee of equal protection under the laws to corporations. This is horribly unexciting because corporations have had these rights contractually since the corporate form emerged at English common law.²⁵ Business corporations grew from an early conception of entities that exist in perpetuity, of which the first was the Crown's representation of the perpetuity of the kingdom.²⁶ Other early corporations existed as the result of prescription in cases where an institution was perpetual by nature, like the City of London and the Church.²⁷ This concept gradually expanded to an entity independent of its members and was applied to business structures.²⁸

Business corporations, unlike civil institutions, were the result of a bargained for exchange that resulted in a "grant or concession from the state, operating either through a Crown charter or the issue of letters patent under the prerogative, or through an Act of Parliament to which the Crown assented."²⁹ This bargain balanced the benefits of centralized capital with the potential problems of perpetual existence and capital aggregation. Businesses that were granted the privilege of incorporation did so not because they had a right, but because they negotiated with the sovereign and offered various forms of consideration in exchange for the right to exist in perpetuity, aggregate capital, and gain other desired privileges.³⁰ Accordingly, the corporate form is traditionally more akin to the manifestation of a contract, not a person.

The King's propensity to utilize the prerogative for Crown charters expanded when kings recognized the imperial benefits of such institutions, namely their ability to establish overseas trade and authority.³¹ Thus, the King granted monopolies for economic and political purposes,³² as well as foreign relations and imperialist motives.³³ In 1695, the Court of King's Bench explained the purpose of Crown-chartered monopoly powers for the East India Company, describing the company as a "a body politic" that acts "to the great honour of the kingdom, the increase of the King's revenue, and of the national interest; and have expended great sums of money thereabouts; and that such trade cannot be maintained but by a corporation."³⁴ Under this royal charter corporate structure, corporations were private for-profit entities that conferred innovative³⁵ foreign

²⁵ See Ron Harris, *Finance and the First Corporations*, GLOBAL PERSPECTIVES ON THE RULE OF LAW (James J. Heckman, Robert L. Nelson, L. Cabatingan, eds., Abingdon: Routledge-Cavendish, January 20, 2009), available at SSRN: <http://ssrn.com/abstract=1330459>.

²⁶ Janet McLean, *The Transnational Corporation in History: Lessons for Today?*, 79 IND. L.J. 363, 364 (Spring 2004).

²⁷ *Id.* at 365 n.5. Blackstone and Kyd found alternatives to Crown corporate charters. These were the City of London (incorporated by prescription) and the church (incorporated by the common law).

²⁸ See A.W. Brian Simpson, *LEGAL HISTORY: How the Corporation Conquered John Bull*, 100 MICH. L. REV. 1591 (May 2002) (reviewing RON HARRIS, *INDUSTRIALIZING ENGLISH LAW: ENTREPRENEURSHIP AND BUSINESS ORGANIZATION, 1720-1844* (2000)).

²⁹ McLean, *supra* note 26, at 364-365.

³⁰ *Id.*

³¹ *Id.* at 365.

³² See, e.g., *The East India Co. v. Sands*, 89 E.R. 988, 1695 WL 182 (KB), 2 Shower. K.B. 366 (1695).

³³ See McLean, *supra* note 26, at 366. ("The costs of embassies, overseas representatives, fortifications, and sometimes, even wars, would be borne by the corporations themselves. They were an important instrument of settlement and colonization.")

³⁴ *The East India Co.*, 89 E.R. 988.

³⁵ See McLean, *supra* note 26, at 365. ("For the first time, money could be raised in return for shares, profits could be divided among shareholders, and shares could be transferred among members and outsiders.")

relations and domestic financial services.³⁶ Despite the repugnancy of some corporate motivations, these enterprises existed in the corporate form only because the sovereign contracted for a public benefit. Accordingly, a give and exchange of privileges and limitations to inure private interests and perpetuate the public-benefit was the consideration for the contractual grant of a Crown charter at common law, a principle that crossed the Atlantic.³⁷

Though corporations were not prevalent in the colonies or early states, the concept remained: “[w]ith respect to acts of incorporation, they ought never to be passed, but in consideration of services to be rendered to the public. This is the principle on which such charters are granted even in England.”³⁸ After the revolution, state legislatures assumed the power to incorporate and continued to exercise it after enactment of the Constitution. In an 1819 case involving a New Hampshire charter originally granted by the King, Chief Justice Marshall explained that corporate charters are, at their very essence, a contract between those who seek incorporation and the Sovereign:

It can require no argument to prove that the circumstances of this case constitute a contract. An application is made to the Crown for a charter to incorporate a religious and literary institution. In the application, it is stated that large contributions have been made for the object, which will be conferred on the corporation as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely, in this transaction, every ingredient of a complete and legitimate contract is to be found.³⁹

For constitutional purposes, the legal underpinnings of such a contract “must be understood as intended to guard against a power of at least doubtful utility, the abuse of which had been extensively felt, and to restrain the legislature in future from violating the right to property.”⁴⁰ From this unique contractual arrangement arose the question, “[b]ecause the government has given [the corporation] the power to take and to hold property . . . has the government a consequent right substantially to change that form, or to vary the purposes to which the property is to be applied?”⁴¹ This question has been fundamental in the issues at hand in subsequent Fourteenth Amendment cases such as *Santa Clara* and modern First Amendment corporate speech cases like *Bellotti* and *Citizens United*, but Marshall answered the question squarely within the Contracts Clause of Article I of the Constitution.

The *Dartmouth* Court held that the Crown charter was a contract that could not be violated because of the contracts clause of the Constitution. Corporations are inherently contractual arrangements reached after negotiations between incorporators and the State.⁴² The Constitution states, “no State shall pass any bill of attainder, ex post facto law, or law

³⁶ See *id.* (“[Corporations] became the major source of public finance by which the monarch could raise revenue without Parliament and at the same time further foreign policy on a self-funding basis.”)

³⁷ See Susan Pace Hamill, *From Special Privilege to General Utility: a Continuation of Willard Hurst's Study of Corporations*, 49 AM. U.L. REV. 81, 88 n. 23 (October 1995) (“ . . . during the colonial period, the Crown granted charters directly to corporations.”) citing 1 Joseph S. Davis, *Essays in the Earlier History of American Corporations* 3, 6-7 & n1 (1917).

³⁸ *Currie's Administrators v. The Mutual Assurance Society*, 14 Va. 315, 347-348 (Nov. 1809)

³⁹ *Trs. Of Dartmouth College v. Woodward*, 17 U.S. 518, 627 (1819)

⁴⁰ *Id.*

⁴¹ *Id.* at 637.

⁴² *Id.*

impairing the obligation of contracts.”⁴³ If a corporate charter agreement is changed by the State after enactment, then judicial action can be taken because “the judicial power [extends] to all cases in law and equity arising under the Constitution” and states are prohibited from impairing the obligation of contracts, including those it enters into through a grant of incorporation.⁴⁴ The English bargained-for exchange structure of the corporate charter was preserved, and States and corporations alike were subject to the terms of their incorporating agreement including a good faith requirement not to act against implicit privileges “incidental to [a corporation’s] very existence.”⁴⁵

The contractual perception of the corporation supposes several concepts that have been fleshed out in later Fourteenth Amendment cases. First, corporations are entitled to the rights put forth in their charters. Property rights must necessarily flow from this entitlement because the basic ability to acquire and use property is at least implicitly granted in any corporate charter because such a right is “incidental to [the corporation’s] very existence.”⁴⁶ Second, state actions that infringe upon the powers granted to corporations are justiciable because they violate the contracts clause, a constitutional infraction that falls under the purview of the judiciary: due process. Third, protection of contractual rights must be uniform, regardless of whether such rights are vested in an individual or a corporation: equal protection. When the Courts addressed these issues through the Fourteenth Amendment, the result was the same despite a drastic change in the quantity and complexity of American corporations.

III. THE CHARACTER OF THE AMERICAN CORPORATION AND THE *SANTA CLARA* ERA

Prior to the Fourteenth Amendment, *Dartmouth’s* view of the corporate charter as a constitutionally protected contract was supplemented by the federalist constitutional framework, which unquestionably preserves a State’s right to charter and oversee corporate charter limitations. The power to incorporate was purposely absent from the Constitution,⁴⁷ which was reiterated by President James Madison’s veto of the Bonus Bill in 1817⁴⁸ even in the face of a diverse and rapidly

⁴³ *Id.* (citing U.S. const. art. I, § 10..

⁴⁴ *Id.* The Court further refused to find an implicit power remaining with the States as the source of incorporation, stating “[t]here can be no reason for implying in a charter, given for a valuable consideration, a power which is not only not expressed, but is in direct contradiction to its express stipulations.” *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ The Constitutional Convention of 1787 addressed the power “to grant charters of incorporation in cases where the public good may require them, and the authority of a single State may be incompetent.” James Madison, *Journal of the Federal Convention*, Saturday 18 August 1787 (reprinted in E.H. Scott, *Journal of the Federal Convention*, 549-50, Chicago, Albert, Scott & Co. (1893)). James Madison enlarged the scope of this consideration to include situations “where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent.” Madison, *supra*, Friday 14 September 1787 (reprinted in Scott, *supra*, at 725-26). In an eight to three vote, the delegates voted against a federal corporate chartering power. In addition to believing it unnecessary, the framers thought the federal power would be too divisive for the local economic concerns of different regions. *Id.*

⁴⁸ President Madison vetoed the Bonus Bill in 1817, effectively fortifying a system of corporate chartering that overtly remained the province of state legislatures. Madison justified his veto under strict constructionist ideas, stating, “[t]he only cases in which the consent and cession of particular States can extend the power of Congress are those specified and provided for in the Constitution.” President James Madison, *Veto of federal public works bill*, March 3, 1817, available at http://www.constitution.org/jm/18170303_veto.htm. Since Madison deemed road building and other infrastructure projects as beyond the legislative powers vested in Congress by the Constitution (despite being a power suggested by Delegate Madison), the veto placed infrastructure development squarely in the jurisdiction of states. Despite “cherishing

growing corporate population.⁴⁹ Because the Constitution did not delegate to the United States nor prohibit States from continuing to charter corporations, corporate chartering powers are reserved rights of the States under the Tenth Amendment.⁵⁰ Accordingly, corporate chartering powers were reserved to the States, subject to the restraints of the Contracts Clause and the Interstate Commerce Clause, though States were prohibited from interfering with federal activities deemed “necessary and proper” to enacting constitutional powers.⁵¹ First Amendment guarantees were not contemplated in this framework and went unaddressed as the American corporation underwent drastic changes through the 1800’s.

Protected from the federal government by the umbrella of federalism, corporations were nonetheless subject to the limits imposed by their chartering states in the process outlined in *Dartmouth*. States were free to condition charters on certain limitations, which included capital restrictions, limited liability restrictions, and limited managerial power.⁵² Such factors were quid pro quo concessions designed to strike the equilibrium necessary for the private benefits of the corporate form to confer a benefit upon the public. Afraid of losing oversight powers after granting corporate charters, states even contractually reserved the right to amend the activities of a corporation after the grant of a charter.⁵³ “In such cases the exclusive grant confers no contract right or vested property right that is beyond alteration or repeal, and the federal Constitution would not be violated by repeal or alteration. Such reservations, being protective and conservative of public right, are construed liberally in favor of the state.”⁵⁴

This continued through the nineteenth century while states gradually shifted from special issuance of corporate charters to general incorporation by adherence to statutory requirements.⁵⁵ The trend spread over a period of two decades, beginning with Pennsylvania’s enactment of a general incorporation statute in 1836.⁵⁶ General incorporation limited the favoritism that could result from specially issued state charters by leveling the playing field through statutory requirements. These statutory requirements, however, were not minimal and kept pace with economic growth.⁵⁷

the hope that [the Bonus Bill’s] beneficial objects may be attained,” Madison was unwilling to construct the Constitution in a manner that would infringe upon the Federal-State balance absent a necessary and proper clause exception. *Id.*

⁴⁹ By 1815, the states chartered over 200 banks, and by 1820, states had issued 307 total corporate charters. Hamill, *supra* note 37, at 93, citing Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business*, 28-30 (1977); Charles Sellers, *The Market Revolution*, 45-46 (1991).

⁵⁰ U.S. Const. amend. X. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” *Id.*

⁵¹ See *McCulloch v. Maryland*, 17 U.S. 316 (1819).

⁵² Included in the rigidly restrictive provisions were maximum and minimum limits on capitalization, limited liability exceptions, mandatory disclosure, limited power vested in management, and inflexible corporate agreements. See E. Merrick Dodd, *Statutory Developments in Business Corporation Law, 1886-1936*, 50 HARV. L. REV. 27, 31, n.14 (Nov 1936). See also, Harwell Wells, *The Modernization of Corporation Law, 1920-1940*, 11 U. PA. J. BUS. & EMP. L. 573 (2009).

⁵³ Henry Brannon, *A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States*, W. H. Anderson & Co., 865 (1901).

⁵⁴ *Id.*

⁵⁵ See, e.g., *id.* (“So hurtful became, in process of time, the rule of the Dartmouth College Case that, following the suggestion of Justice Story made in it, the states frequently adopted the course of inserting in charters granted by them a clause reserving right to alter or repeal the charter, or sometimes incorporated in their constitutions or general corporation statutes such reservations.”)

⁵⁶ Hamill, *supra* note 37, at 101 (citing Act of June 16, 1836, ch. CCCLX, 1836 Pa. Laws 746 (special charter not required for incorporation if “making or manufacturing iron from the raw material, with coke or mineral coal”).

⁵⁷ Wiley B. Rutledge, Jr., *Significant Trends in Modern Incorporation Statutes*, 22 WASH.U. L.Q. 305, 307 (1937).

At no point during the shift to free incorporation did States cede their authority to condition the granting of corporate charters.⁵⁸ However, they did eliminate many corporate restrictions during a race to the bottom for corporate revenues.⁵⁹ During this process, corporations centralized through a change in shareholder theory from owner to “passive investor.”⁶⁰ Further, shareholders gained limited liability, managerial control expanded, and shareholder roles were subordinated, leading to the emergence of the business structures we know today.⁶¹ These changes were the prerogative of states that saw a benefit in loosening corporate restrictions. The loosening of restrictions was not a response to the Fourteenth Amendment or a grant of constitutional guarantees, nor did it give birth to the corporate person. Corporate formation remained the prerogative of the State, subject to protection via federalist principles of the Constitution.

It was in this legal landscape that the *Santa Clara*-era Court analyzed the constitutional guarantees afforded to corporations; only the issue now required analysis under the Fourteenth Amendment. Contrary to popular belief, no drastic change occurred. *Santa Clara* applied equal protection to corporations in the same manner as that of an individual. Subsequent *Santa Clara* jurisprudence limited the scope of comparison for corporate equal protection to other corporations chartered by the same State – not humans.⁶² Explaining this two years after *Santa Clara*, the Court stated, “[t]he equal protection of the laws which [corporations] may claim is only such as is accorded to similar associations within the jurisdiction of the State.”⁶³ The equality distinction went as far as to permit States to encumber foreign corporations in any manner that does not infringe upon interstate commerce.⁶⁴ States had supreme authority to condition the business of a corporation, but equally chartered corporations required protection in a uniform fashion.⁶⁵ When corporate charters are the same, they must be enforced the same. This principle is no different at common law than it is under Fourteenth Amendment analysis, and the Court’s language continually supported this notion.

Corporations are not persons automatically entitled to the guarantees of the federal Constitution; rather, when corporations hold a right, they are entitled to the same treatment as

⁵⁸ See e.g., Victor Morawetz, *The Management of Corporations*, 2d Ed. Vol. I, §§508 - 515 (1886).

⁵⁹ For a complete analysis of the revenues associated with charter mongering and other states’ response thereto, see Christopher Grandy, *New Jersey Corporate Chartermongering, 1875 – 1929*, 49 J. OF ECONOMIC HISTORY 677 (Sept. 1989).

⁶⁰ See A. A. Berle, Jr. and Gardiner C. Means, *Corporations and the Public Investor*, 20 THE AMERICAN ECONOMIC REVIEW 54 (Mar. 1930). Berle and Means separated the legal protections by group, namely general public protection from undue expansion, creditor protection from over indebtedness, and stockholder protection through rigid rights.

⁶¹ See Edward Q. Keasbey, *New Jersey and the Great Corporation*, 13 HARV. L. REV. 198 (1899) (discussing late-nineteenth century New Jersey statutes that decreased restrictions on the corporate by (i) permitting stock issuance for property; (ii) lifting the resident requirement for chartering; (iii) eliminating limits on capital stock; (iv) taxation at the same rates as individuals; (v) permitting corporations to hold the stock of other corporations; (vi) eliminating the fifty year duration cap; (vii) permitting different classes of stock; (viii) protecting stockholders and officers from personal liability claims under other state statutes; (ix) permitting incorporators to define and limit the roles of stockholders and management; (x) and permitting corporations to lease property and franchises to other corporations).

⁶² *Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania*, 125 U.S. 181, 189 (1888).

⁶³ *Id.*

⁶⁴ *Id.* (“The State is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporations of interstate or foreign commerce.”)

⁶⁵ As long as a “statute is applicable alike to all . . . companies doing business in [a state], after its enactment, there is no reason for saying that it denies the equal protection of the laws.” *Northwestern Nat. Life Ins. Co. v. Riggs*, 203 U.S. 243, 255 (1906).

humans.⁶⁶ This varies insignificantly from the contractual theory of a corporation outlined in *Dartmouth*, as States are required to honor charters and the judiciary may review issues thereon. The language used in *Santa Clara* and the subsequent Fourteenth Amendment corporation cases supports this assertion.⁶⁷ Corporations are never simply “persons,” but corporations are persons “within the meaning of [the Fourteenth Amendment].”⁶⁸ When treated as persons for Fourteenth Amendment purposes, the *Santa Clara* legacy protected only the quid pro quo liberties explicitly or implicitly granted to corporations.⁶⁹ With this standard, the challenging corporation lost each case where they argued *Santa Clara* automatically enabled access to human liberties protected by the Constitution.⁷⁰ Indeed, the Court stated “[t]he liberty referred to in that [Fourteenth] Amendment is the liberty of natural, not artificial persons[.]”⁷¹ and therefore constitutional guarantees, including speech, apply only once possessed.

The *Santa Clara* legacy also reinforced a corporation’s right to due process, which serves as a means of enforcing the charter agreement between the State and its chartered corporations while simultaneously ensuring property is not taken outside the boundaries of a charter (thus violating equal protection). The fundamentals of this were spelled out in *Chicago, Milwaukee & St. Paul Railway v. Minnesota*, where a state commission lowered railroad freight rates for the Chicago, Milwaukee & St. Paul Railway.

If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws.⁷²

The State maintains its ability to condition the corporate form as it pleases through the chartering power.⁷³ However, if rates are restricted via a State action that falls outside the boundary of the charter agreement, due process will ensure adherence to the rights and concessions spelled out in the charter. “The rights and securities guaranteed to persons by that [Fourteenth Amendment] instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations.”⁷⁴ This is no different from judicial enforcement of the Contracts Clause, as States cannot violate contracts entered into via corporate charters.⁷⁵ Whether it is termed Due Process under the Fourteenth Amendment or enforcement of a State restriction enumerated in

⁶⁶ *Id.* at 253-55.

⁶⁷ *Santa Clara County v. S. P.R. Co.*, 118 U.S. 394 (1886) (“Corporations are persons within the intent of the clause in section 1 of the Fourteenth Amendment”); *Charlotte, C. & A. R. Co. v. Gibbes*, 142 U.S. 386, 391 (U.S. 1892) (“Private corporations are persons within the meaning of the amendment. . . .”); *Minneapolis & S. L. R. Co. v. Beckwith*, 129 U.S. 26, 28 (U.S. 1889) (“[C]orporations are persons within the meaning of the [Fourteenth Amendment].”)

⁶⁸ *Minneapolis*, 129 U.S. at 28-29.

⁶⁹ *Id.*

⁷⁰ *See, e.g.* *Northwestern Nat. Life Ins. Co.*, 203 U.S. at 255.

⁷¹ *Id.*

⁷² *Chicago, Milwaukee & St. Paul Railway v. Minnesota*, 134 U.S. 418, 458 (1890).

⁷³ *Id.*

⁷⁴ *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U.S. 150, 154 (1897).

⁷⁵ *Dartmouth*, 17 U.S. at 637 (*citing* U.S. Const. art. I, § 10).

the Constitution, those who incorporate enter into a charter with specific terms and to violate the terms is outside the scope of the state's authority. Only due process of law can determine where this has occurred, and that due process of law *applies* to corporations just as it would a person.⁷⁶

The *Santa Clara* legacy has been construed to give birth to corporate personhood, but this interpretation fails to account for centuries of corporate law and the basic federalist framework of the Constitution. In the fallout of the Fourteenth Amendment, equal protection and due process were explicitly guaranteed to corporations because their charters, at the very least, grant the liberty to aggregate property.⁷⁷ Indeed, incorporating without the liberty of acquiring and utilizing property prevents such an organization from performing a single task. However, states have a valid interest in limiting the scale and scope of property acquisition and usage, which can be seen in modern public utility, banking, and insurance incorporation statutes. Accordingly, it is implicit in a corporate charter that due process is reserved to determine when property is being taken outside the scope of the property agreement.⁷⁸ This implicit right has been present in corporate law for centuries, and only recently has it been used to confer non-enumerated and/or non-implicit constitutional guarantees to corporations such as political and press speech rights.

IV. THE IMPLICIT GRANT OF CORPORATE SPEECH AND THE JUDICIAL CREATION OF VESTED CORPORATE FIRST AMENDMENT RIGHTS

If *Bellotti* and *Citizens United* are ignored, the modern state chartered corporation's place within the Constitution has not, in effect, strayed from the common law conception of the corporation nor the federalist balance inherent in the Constitution. The state has the prerogative to grant corporate charters. The quid pro quo charter sets out the privileges and restrictions granted to that corporation. Neither the State nor the corporation may infringe upon those terms. Once a constitutionally protected guarantee has implicitly or explicitly been granted to an artificial entity, the Constitution and fundamental principles of contract law protect infringement thereon. This includes press and political speech, which are implicit guarantees conferred upon corporations when a state approves the charter for an entity engaging in the sale of newspapers or engaging in political activities.⁷⁹

In *Grosjean v. American Press Co.*, the Court held that a corporation engaged in press activities is entitled to the same First Amendment guarantees as a natural person.⁸⁰ The Court stated, "a corporation is a 'person' within the meaning of the equal protection and due process of law clauses . . ." ⁸¹ Using this standard, the Court struck down a tax on newspapers because it infringed upon the corporation's ability to engage in its business – newspaper circulation – a business purpose that implicitly carries the freedom of the press.⁸² As the Court said, "[the tax] is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties."⁸³ Since the American Press Co. was engaged in press activities, it

⁷⁶ *Santa Clara*, 118 U.S. at 409.

⁷⁷ *Id.*

⁷⁸ See *Dartmouth*, 17 U.S. at 637; *Santa Clara*, 118 U.S. at 409.

⁷⁹ *Grosjean v. Am. Press Co.*, 297 U.S. 233, 249 (1936).

⁸⁰ *Id.*

⁸¹ *Id.* at 244.

⁸² *Id.* at 249.

⁸³ *Id.* at 250.

necessarily implies that the State has granted freedom of the press in chartering process. This was not protected equally in *Grosjean*, as the tax was “measured alone by the extent of the circulation of the publication in which the advertisements are carried, with the plain purpose of penalizing the publishers and curtailing the circulation of a selected group of newspapers.”⁸⁴ Not only does this unequally hamper a newspaper’s ability to do business, it restricts the press guarantees impliedly granted when the state granted the corporate charter.

The same logic applies to corporations engaged in political activity. In *NAACP v. Button*, the Court held that Virginia could not hamper the political efforts of NAACP litigators based on the state’s interest in regulating barratry.⁸⁵ Logically, the political speech of a corporation formed to engage in political activities must be upheld under contractual and Fourteenth Amendment principles. The National Association for the Advancement of Colored People, Inc., aims to achieve “equality of treatment by all government, federal, state and local, for the members of the Negro community in this country,”⁸⁶ and it “devotes much of its funds and energies to an extensive program of assisting certain kinds of litigation on behalf of its declared purposes.”⁸⁷ Since those activities and purposes are “constitutionally protected, which the statute would curtail[.]”⁸⁸ the State is prohibited from stripping a power it has explicitly or implicitly granted. Regardless of whether NAACP litigation is constitutionally protected political expression, the corporation was formed to engage in such activities. Once this power is conferred, the state may not renege on its contract, nor may it deny equal protection under the laws. Regardless of the source of law, Virginia could not keep the NAACP from engaging in the activity both sides implicitly agreed the corporation would be able to perform, in this case political expression.

Citing the above cases, *Bellotti* and *Citizens United* assert that corporations have a protected First Amendment right.⁸⁹ This ignores the fact that corporations can only possess the rights explicitly granted in their charter, or implicitly required to effectuate their purpose. Ignoring this analysis allows the decision to turn strictly on First Amendment rights, ignoring the applicability of Article I, Section 10, the Tenth Amendment right of a State to condition a corporate charter, and limiting the Fourteenth Amendment.

Citizens United holds that the government may not suppress the political speech of corporations.⁹⁰ Justice Kennedy, writing for the majority, applied the strict scrutiny standard to determine whether the Federal Election Committee could prevent Citizens United from airing a politically-focused⁹¹ movie in the sixty day period leading up to a national election.⁹² Outlining a corporation’s access to the First Amendment, Kennedy cites *Bellotti*, and the ten cases cited therein, as well as eight additional First Amendment cases focused on freedom of the corporate press.⁹³ Conversely, Justice Stevens’s dissent outlines the consequences of corporate free speech.⁹⁴ Further,

⁸⁴ *Id.* at 251.

⁸⁵ *NAACP v. Button*, 371 U.S. 415, 429 (1963)

⁸⁶ *Id.*

⁸⁷ *Id.* at 419-20.

⁸⁸ *Id.* at 428.

⁸⁹ *Citizens United*, 130 S. Ct. 876.

⁹⁰ *Id.* at 886.

⁹¹ “[T]here is no reasonable interpretation of *Hillary* other than as an appeal to vote against Senator Clinton.” *Id.* at 890.

⁹² *Id.* at 898.

⁹³ *Id.* at 899-900.

⁹⁴ *Id.* at 940-41 (Stevens, J., dissenting).

he combats other interpretations of the Framers' intentions as they related to corporate powers.⁹⁵ In their drawn out discussions, neither the majority nor the dissent approach the case through the federalist lens, namely whether Citizens United was granted the power to engage in political expression by its chartering state and whether the federal law at issue infringed upon Citizens United's right to exercise the power.

According to the majority, "*Bellotti* could not have been clearer when it struck down a state-law prohibition on corporate independent expenditures related to referenda issues"⁹⁶ Justice Kennedy then quotes the *Bellotti* majority: "In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue."⁹⁷ Despite the majority's insistence on relying upon concurring and dissenting opinions,⁹⁸ the majority did not cite a crucial dissenting opinion from *Bellotti*. In that decision, Justice Rehnquist dismissed First Amendment arguments on corporate free speech restrictions because the issue is reserved to the states and subject only to equal protection and due process limits through the Fourteenth Amendment. Through his dissenting opinion in *Bellotti*, it is clear that Justice Rehnquist understood the balance between applying constitutional protections and preserving state chartering powers.

Justice Rehnquist did not address the limitations developed through the *Santa Clara* legacy, but he did note that discrepancies are present in the jurisprudence relied upon by the *Bellotti* majority, namely that corporations are persons for Fourteenth Amendment purposes under *Santa Clara* but subsequent cases concluded that the "liberty protected by that Amendment 'is the liberty of natural, not artificial persons.'"⁹⁹ Doing so was inconsequential to his opinion—the Massachusetts statute in question provided enough protection as the Fourteenth Amendment requires. Justice Rehnquist argued that a state statute is constitutional if it contains adequate Fourteenth Amendment protections. The Fourteenth Amendment protects only what an artificial entity possesses, which is delineated in the chartering process. For commercial corporations, the right to acquire property is the standard right protected by the equal protection and due process clauses of the Fourteenth Amendment. According to Rehnquist, corporate restrictions are permissible if they are not "necessary to carry out the functions of a corporation organized for commercial purposes."¹⁰⁰ Justice Rehnquist reasoned, "[s]o long as the Judicial Branches of the State and Federal Governments remain open to protect the corporation's interest in its property, it

⁹⁵ *Id.* at 948-52 (Stevens, J., dissenting).

⁹⁶ *Id.* at 902.

⁹⁷ *Id.* (quoting *Bellotti*, 435 U.S. at 784-785).

⁹⁸ "Four Justices, however, said they would reach the constitutional questions and invalidate the Labor Management Relations Act's expenditure ban." *Id.* at 901 (citing *United States v. CIO*, 335 U.S. 106, 155 (1948)); "The dissent concluded that deeming a particular group 'too powerful' was not a 'justificatio[n]' for withholding First Amendment rights from any group—labor or corporate" *Id.* at 901 (citing *United States v. Automobile Workers*, 352 U.S. 567, 597 (1957) (Douglas, J., dissenting)); "It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights." *Id.* at 905 (quoting *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 680 (Scalia, J., dissenting)); "The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker's ideas." *Id.* (citing *Austin*, 494 U.S. at 707 (Kennedy, J., dissenting)); "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." *Id.* (quoting *Austin*, 494 U.S. at 691 (Scalia, J., dissenting)) (*I Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 784 (1985) (Brennan, J., joined by Marshall, Blackmun, and Stevens, JJ., dissenting)). The list continues.

⁹⁹ *Id.* (citing *Northwestern Nat. Life Ins. Co.*, 203 U.S. at 255).

¹⁰⁰ *Bellotti*, 435 U.S. at 825.

has no need, though it may have the desire, to petition the political branches for similar protection.”¹⁰¹

Rehnquist extended this argument to press corporations and political corporations. Implicit guarantees are present – First Amendment protection – when a state charters “a corporation for the purpose of publishing a newspaper” or “permits the organization of a corporation for explicitly political purposes.”¹⁰² As Rehnquist argues, this protection is a logical extension of the protections applied to corporations given the “power to acquire and utilize property,” namely, “that the corporation will not be deprived of that [right] absent due process of law.”¹⁰³

V. PROPER ANALYSIS OF *CITIZENS UNITED* AND ALTERNATIVE MEANS OF CONTROLLING CORPORATE ELECTIONEERING

Rehnquist’s logic holds true in *Citizens United*. The federal law at issue, “Section 441b[,] makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election.”¹⁰⁴ As the Court rightly held, Congress cannot restrict speech once it has been granted to an entity. However, the judiciary cannot enforce constitutional rights where they have not been granted to an artificial entity. Accordingly, because delineating corporate abilities is an issue reserved to the chartering State, the Court should have explored Citizens United’s rights as delineated in their corporate charter.

Citizens United is a Virginia Nonstock Corporation that was originally chartered in 1988.¹⁰⁵ By complying with Chapter 10 of Title 13.1 of the Virginia code, Citizens United agreed to abide by the terms of the Nonstock Corporation Act in exchange for a certificate of incorporation. “Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this [Nonstock Corporation] Act.”¹⁰⁶ Virginia does not require its Nonstock Corporations to state a corporate purpose unless a “statute requires the corporation to issue shares or one of the purposes of the corporation is to conduct the business of a public service company”¹⁰⁷ When this is not the case, a corporation is considered to have “the purpose of engaging in any lawful activity” unless “[a] more limited purpose is (i) set forth in the articles of incorporation or (ii) required to be set forth in the articles of incorporation by any other law of the Commonwealth.”¹⁰⁸

Unless Citizens United’s articles of incorporation state otherwise, the rights conferred upon it by the state include “perpetual duration and succession in its corporate name and . . . the same powers as an individual to do all things necessary or convenient to carry out its business and affairs .

¹⁰¹ *Id.* at 826

¹⁰² *Id.* at 771 n.5.

¹⁰³ *Id.* at 824.

¹⁰⁴ *Citizens United*, 130 S. Ct. at 897.

¹⁰⁵ Commonwealth of Virginia State Corporation Commission, available at https://cisiweb.scc.virginia.gov/z_container.aspx.

¹⁰⁶ VA. CODE ANN. § 13.1-820 (2009)

¹⁰⁷ VA. CODE ANN. § 13.1-825 (2009)

¹⁰⁸ *Id.*

...¹⁰⁹ This clause protects the corporation's right to property and grants access to the equal protection and due process clauses of the Fourteenth Amendment. Since there is no language requiring political purpose declarations, and the fact that the corporate purpose of Citizens United is presumably politically based, First Amendment political speech rights are conferred through the Fourteenth Amendment. Accordingly, producing a movie like *Hillary* is within "all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized"¹¹⁰ and implicitly protected by the Constitution. The power to exercise free political speech is either implicitly or explicitly reserved by Citizens United, a corporation that has engaged in political activity long before *Hillary* was produced. Therefore, the corporation is guaranteed First Amendment protections. Accordingly, a federal law outlawing express advocacy and electioneering broadcasting by corporations, including those that exist to engage in advocacy and electioneering, violates the constitutional guarantees implicitly or explicitly guaranteed to such corporations by their chartering states.

Despite the implicit reservation of First Amendment rights, Virginia retains the right to condition corporate powers, including the power to engage in political corporate speech. The second section of the Nonstock Corporation Act states that "[t]he General Assembly shall have power to amend or repeal all or part of this Act at any time, and all domestic and foreign corporations subject to this Act shall be governed by the amendment or repeal."¹¹¹ Accordingly, if the Virginia General Assembly thought it would be good policy to limit corporate political speech, they could amend the powers granted to corporations. This will include all future corporations, and the judiciary will undoubtedly decide whether such measures apply retroactively to corporations that already have political speech powers, including Citizens United.¹¹²

If a state wants to curb corporate spending on elections, it can simply add an electioneering clause to the charter laws of corporations. Instead of eliminating political corporations, however, it is logical to require such organizations to declare political activity as part of their purpose and regulate such corporate activity in a separate manner than general business corporations, much in the same way public utilities are organized and regulated.

Where state policymakers want to limit a corporation's ability to fund election efforts, there are multiple ways to achieve this goal. First, for corporations formed for commercial purposes (not political purposes), the power to make expenditures for political purposes can be explicitly denied. Alternatively, director duty portions of incorporating statutes can make it a violation of the duty of loyalty to make a political expenditure on behalf of the corporation. Second, the state can require organizations that want to have First Amendment protections to state this in their articles of incorporation. Where a corporate purpose includes political activities, a separate set of conditions can be required before incorporation is granted with political speech protection. This is no different

¹⁰⁹ VA. CODE ANN. § 13.1-826(A) (2009).

¹¹⁰ VA. CODE ANN. § 13.1-826(A)(17) (2009).

¹¹¹ VA. CODE ANN. § 13.1-802 (2009).

¹¹² On the one hand, a change in the charter law would be subject to the Fourteenth Amendment as far as equal protection and due process are concerned, but the change applies equally to all Nonstock Corporations and is not an election law subject to First Amendment right analysis. The law relates strictly to the powers of Virginia Nonstock corporations, which Virginia explicitly reserves the right to alter. On the other hand, *Citizens United* could argue, as could any other corporation engaged in political speech activities, that this deprives the corporation of a constitutional right it has already possessed.

from requiring utilities to abide by a special incorporating process, which all states do on varying levels.

The fundamentals of this analysis are a throwback to the days when the federalist balance was well preserved. Fortunately, corporate formation was never blurred by a century of commerce clause regulation or other federal efforts to regulate State interests. Accordingly, the federal government does not have power in the chartering process, and there can be no constitutional claim where the entity does not possess the right to claim it.

However, there are three avenues that the federal government can pursue to limit corporate political expenditures. First, the federal government can lead a movement for all fifty states to adopt a uniform electioneering restriction in their corporate chartering laws. Uniformity is crucial for such an effort considering corporate law's propensity to race to the bottom. Second, Congress can use the power of the purse to condition funds related to elections on corporate political activities. Many states have outdated voting machines, and this could be a good approach to standardizing state corporate electioneering laws and election operations across the country. Lastly, the Constitution can be amended to address the issue. This can be done from the electioneering angle to avoid intruding upon the federalist corporate chartering balance, or it can grant the federal government the ability to control chartering standards. Considering that States are unlikely to cede chartering power, an amendment narrowly addressing electioneering would be more likely to occur.

The federalist balance to corporate law and constitutional protections has been pushed aside by *Citizens United* and the faulty precedent it relies upon. The Court's decision is too narrowly focused on speech, thereby diverging from the historical, constitutional, and legal precedent of the federalist chartering process. Once speech advocates and corporate skeptics alike examine this structure, then and only then can the proper role of corporations within the First Amendment and election cycles be determined.