

Citizens United case unlikely to end corporate speech debate

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The debate over the constitutionality of regulating corporate speech took a significant turn in the U.S. Supreme Court's Citizens United decision, but it's an issue that almost certainly won't die down in the aftermath of that highly publicized case, says a University of Illinois business law expert.

Law professor Larry E. Ribstein says the court's 5-to-4 ruling in favor of corporate speech has sparked a furor among pundits and the public that shows little signs of ebbing.

"The debate in the aftermath of the Citizens United decision has centered on whether the court's decision will unleash a flood of corporate money that will corrupt the political marketplace and, ultimately, democracy itself," Ribstein said. "Well, the Supreme Court's [majority opinion](#) basically rejected that argument. So that issue isn't really up for debate, even though it continues to make headlines."

According to Ribstein, the big issue left unsettled by the court is the extent to which the government can regulate [corporate governance](#) processes consistent with the First Amendment. Although the majority opinion clarified that corporate speech is protected, the ruling raises other issues concerning the constitutionality of regulating the corporate decision-making processes that authorize speech.

"The majority's approach attempted to resolve corporations' First Amendment rights, but it also left room for regulation that does not

attempt to directly limit corporate speech," said Ribstein, the Mildred Van Voorhis Jones Chair in Law.

"So the complications that arise from trying to regulate corporate governance related to speech are going to be pretty significant," said Ribstein, who also is the associate dean for research in the College of Law.

That's not entirely unexpected, Ribstein says. When the government tries to protect one group of speakers, a whole host of complications inevitably arise.

"One thing that such regulation will surely do is restrict the kind of speech that the public can hear, which is bad given that we want robust political debate, and given that legislators have a selfish interest in the kind of speech they're going to be restricting," he said. "That's exactly what the First Amendment is supposed to be a shield against – incumbent politicians controlling debate that could determine their tenure in office."

As a result, what's really going on in the Citizens United decision is that the Supreme Court was, in effect, saying that "the dangers of corporate speech are less important than having speech heard," Ribstein said.

"This listener's rights argument is the best way to make sense out of the post-Citizens United landscape," he said. "It's the idea that what really matters isn't so much the speaker's right to self-expression but the need to maintain a robust debate for the benefit of society as a whole."

Although it's not clear what effect the Citizens United ruling will have on political speech by corporations in the next presidential election, the risks inherent in deciding who can speak are high, and the better course is to err on the side of more speech, Ribstein says.

"The bottom line is that everybody's been focused on the potential for corporations to corrupt elections," he said. "That's just part of a broader issue, which is whether we should try to level the playing field, despite the fact that it's not clear what the consequences of that leveling would be, whether politicians should have the power to control what kind of speech people hear."

Provided by University of Illinois at Urbana-Champaign

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