

Research examines corporate communications in the 'gilded age' of free speech

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An analysis of U.S. Supreme Court decisions suggests "historical amnesia" regarding the growing power of speech rights for corporations in electronic media, versus the First Amendment rights of individuals. Jeff Blevins, associate professor and head of the University of Cincinnati's Department of Journalism, will present his research on Tuesday, April 9, at the 58th annual convention of the Broadcast Education Association in Las Vegas.

Blevins' presentation, titled "Historical Amnesia in First Amendment Jurisprudence on Corporate Power and Electronic Media," suggests that recent decisions from the nation's highest court have "allowed corporations' power to speak to become even greater than that of human citizens."

Blevins examined eight U.S. [Supreme Court](#) cases over a 30-year period that defined speech rights for corporations.

The study analyzed:

- Corporate speech in campaigns and elections
- Corporations and commercial speech
- Corporations and conflicts of speech and privacy

"In a bygone era, the U.S. Supreme Court had once predicated commercial speech rights on the public's right to receive information, and also understood the need to limit corporate speech – even in the political arena – in the interest of protecting the integrity of the public's electoral process," says Blevins. "However, the court's most recent decisions have dramatically extended power under the First Amendment and have marked a new, gilded age of free speech."

The research examined the following court cases:

Buckley v. Valeo (1976) – A challenge to the Federal Election Campaign Act of 1971 which limited the amount of money that individuals could contribute to election campaigns. The court made the distinction between contributions and expenditures, lifting limitations on expenditures. The ruling resulted in significant growth of Political Action Committees (PACs.)

Austin v. Michigan Chamber of Commerce (1990) – The challenge involved a Michigan state law that prohibited corporations from using money from their general treasuries to support or oppose candidates in state elections. The Michigan Chamber of Commerce challenged the law because of its interest in purchasing newspaper advertisements in support of a particular candidate running for state office. The Supreme Court ruled that limiting speech based on corporate identity was permissible under the law and that the law did not silence corporate speech.

McConnell v. Federal Election Commission (FEC) (1990)— The campaign finance case, brought by U.S. Sen. Mitch McConnell of Kentucky, was a challenge to the Bipartisan Campaign Finance Reform Act (BCRA) of 2002, which banned campaign advertising by corporations and other organizations 30 days prior to a primary election and 60 days prior to a general election. The ruling upheld most of the

act, including prohibitions on corporate advertising during pivotal periods of political campaigns.

Citizens United v. FEC (2010) – The case involved a challenge to the BCRA in that a nonprofit wanted to release a documentary – a movie holding negative criticism of Hillary Clinton – via on-demand cable television, 30 days before the primary election in which Clinton was seeking the Democratic Party's nomination for U.S. President. Citizens United opposed the BCRA in that it wanted to advertise the film within 30 days of the primary. The organization appealed to the U.S. Supreme Court after a lower court found Citizens United in violation of the federal rules. The U.S. Supreme Court reversed the lower court's decision, stating the ban on corporate independent expenditures violated the First Amendment. Blevins cited the ruling as a case of "historical amnesia," in that the ruling appeared to be in contradiction to the high court's decision in the case of *McConnell v. FEC*. The decision also contradicted the high court's judgment in *Austin v. Michigan Chamber of Commerce*.

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council (1976) – A consumer group challenged a rule by the Virginia State Board of Pharmacy that forbade pharmacists to advertise the price of prescription drugs – a rule aimed at discouraging price wars among drug companies.

Blevins states that in this case, the high court brought commercial speech under First Amendment protections, but found commercial speech deserves less protection than political speech.

Central Hudson Electric and Gas v. Public Service Commission of New York (1980)— This involved a challenge to the Public Service Commission of New York's order to cease all utility company advertising that promoted the use of electricity, an effort to conserve

energy amid concerns that consumer demand would grow greater than the energy supply. The order was upheld under the New York Court of Appeals and then reversed by the U.S. Supreme Court, which found that the commission's order unduly burdened free speech.

Sorrell v. IMS Health (2011) – The challenge was against a Vermont State law prohibiting pharmaceutical "detailing," on drugs that doctors prescribed to their patients, allowing marketers and manufacturers to gather that information for their own marketing strategies. The case was argued before the U.S. Supreme Court by William Sorrell, Virginia State Attorney General. Several information mining companies challenged the law, citing it was a violation of their freedom of speech under the First Amendment. After conflicting rulings in the lower courts, the U.S. Supreme Court struck down the law as an unconstitutional restriction of corporate speech.

FCC v. AT&T (2011) – Under the Freedom of Information Act, government records and documents can be made publicly available, unless those records result in an unwarranted invasion of personal privacy. This case resulted in action from AT&T, after a trade organization requested documents from an FCC action on AT&T. AT&T filed to have the Freedom of Information Act apply to both individuals and the corporation, which was upheld by the Third Circuit Court of Appeals but struck down by the Supreme Court, which found that the Freedom of Information Act only applied to individuals.

Blevins suggests the rulings indicate that the court actions imply that more speech is better, yet Blevins emphasizes that the First Amendment was written at a time when only humans, not corporations, were doing the communicating. "The real value of commercial speech resides in the receiver's interest and not the speaker's. It is the interest of humans to receive information that is more important than the speaker's self interest," writes Blevins.

"Through the evolution of Supreme Court jurisprudence, it seems that corporations' limited right to speak to serve the people has become an interest superior to that of the people it purports to serve," concludes Blevins.

The paper was awarded first place in the Broadcast Education Association's History Division open paper competition.

Blevins' research focuses on U.S. telecommunication law and policy, and engages critical political economy theory. His research has examined media ownership regulation, First Amendment jurisprudence on media ownership regulation, Internet media policy and the politics of the telecommunication policymaking process.

Provided by University of Cincinnati

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