

## Free Speech in Private Corporations

Writers and speakers are often dependent on corporate publishers or corporate-owned locales to be heard. Business corporations use their economic power to participate in the political process through lobbying, news media, contributions and political campaigns.

The Tillman Act (1907) barred corporate contributions to federal candidates, expressing a view that corporations were not legitimate political actors. The courts restricted the ban and its state equivalents to a limited core. The current statute specifically permits corporations to use corporate money to staff political action committees so long as the funds transferred to candidates are derived from employee contributions. FECA, 2 U.S.C. § 441(b).

Generally, First Amendment law does not distinguish between corporate and human speakers. Thus, governmental restriction of corporate funds used for lobbying, “public education” and even referenda campaigns appears to be fully barred by the First Amendment. *First National Bank v. Bellotti* (political lobbying); *New York Times v. Sullivan* (“editorial advertisement”). However, corporate law typically requires corporate decision-makers to cause the corporation to use its resources (including its employees’ voices) on behalf of the limited, legally constructed interests of the institution itself, not any human affiliated with it. Accordingly, granting free speech rights to corporations probably does not further free speech values of political self-governance or freedom of expression even of corporate participants.

Dissident speakers within the corporation (e.g. employees who disagree with official corporate positions or shareholders who seek to change corporate policies) have no First Amendment rights against business corporations, because the Amendment extends only to state action.

Daniel J.H. Greenwood

### References and Further Reading

Adam Winkler, *McConnell v. FEC*, *Corporate Political Speech and the Legacy of the Segregated Fund Cases*, *Election Law Journal* 3: no. 2 (2004): 361-369

Daniel J.H. Greenwood, *Essential Speech: Why Corporate Speech Is Not Free*, *Iowa Law Review* 83: no. 5 (1998): 995-1070

Meir Dan-Cohen, *Rights, Persons, and Organizations: A Legal Theory for Bureaucratic Society* Berkeley: University of California Press, 1986

### Cases and Statutes Cited

*First National Bank v. Bellotti*, 435 U.S. 765 (1978)

*McConnell v. FEC*, 124 U.S. 619 (2003)

Federal Elections Campaign Act (FECA), 2 U.S.C. § 441(b)

Tillman Act (1907), ch. 420, 34 Stat. 864