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## Is the 28<sup>th</sup> Amendment calling for censorship?

Some groups are taking the position that declaring corporations are not people, and overturning *Citizens United*, amounts to an attack on free speech, or that corporate “voices” are being censored. We believe that the 28<sup>th</sup> Amendment would actually *enhance* free speech by allowing more voices—those of actual voters—to be heard. Here are some questions that are sometimes asked, and our responses.

### **1. When you say that you want to deprive corporations of the right to speak, aren't you advocating censorship?**

No. Corporations are fictional entities and cannot “speak” at all. When people say corporations should have the right to speak, they are buying into the analogy that corporations are people. But we believe that corporations are very different from people, have very different interests from people, and are designed as tools to facilitate commerce and economic activities. They are not designed for political speech.

### **2. But corporations are people, aren't they? They are run by people, employ people, are owned by people. So shouldn't corporations as collections of people be allowed to speak?**

The problem with that analogy is, who speaks for the corporations? The shareholders? In a large public corporation the shareholders are very diverse and disconnected from the day-to-day management of the corporation; they probably couldn't agree on what the corporation should “say” even if they tried. In a closely held corporation (with a small number of private owners) the owners can speak in their own voices and don't need their corporations to speak for them.

The employees of the corporation? Many times the employees have divergent interests from the corporation itself. For example, employees probably want higher wages which might lower corporate profits. What the employees might want to say would be different from what the corporation might want to say to protect its profits.

That leaves the corporate executives and board of directors to choose what the corporation “says.” But once again, those people have their own voices; why should they hide behind the corporation? If they believe what they want the corporation to say, why not allow them to speak in their own voices? We aren't trying to shut down those individuals.

### **3. By shutting down corporate speech, aren't you subtracting some voices from the marketplace of ideas that the First Amendment protects?**

Not at all. Again, we need to discard the bad metaphor that corporations are people; they aren't. Corporations are tools, created by humans to do specific things. When corporate leaders try to use a corporation to “speak,” they are really turning the corporation into a megaphone to amplify their own speech. And that is the problem: corporate speech can quickly become so loud and overpowering, when

amplified by corporate money, that it drowns out the speech of ordinary citizens who don't have that tool. So our proposal actually promotes free speech for ordinary citizens, by shutting down the megaphones that drown our voices out.

**4. What about media corporations? Are you going to tell the New York Times that it cannot endorse political candidates any more?**

Great question. Media corporations are unlikely to be affected by our proposed 28<sup>th</sup> Amendment. The First Amendment says: "Congress shall make no law ... abridging the freedom of speech, or of the press ...". Note that freedom of *speech* is protected separately from freedom of the *press*. *Citizens United* deals with speech rights, not press rights. By overturning *Citizens United*, we do not mean to impair the freedom of the *press*. Now of course that creates some definitional problems of what corporations qualify for protection as members of the press, but those lines shouldn't be that hard to draw. And everybody would agree which side of the line the New York Times would fall.

**5. So you want money out of politics. What if a very wealthy individual wanted to spend millions of dollars of his own money supporting wind power. Does your proposed amendment restrict that?**

Now you are getting into the "money is not speech" portion of our initiative. This raises the distinction between "policy" and "politics." Issue advocacy—that is, advocating policy measures—has always been treated differently from direct advocacy for individual political candidates. With advocacy for candidates, there is a real risk of corruption: the elected politician's official votes or official actions conform to the wishes of the wealthy donor instead of what is preferred by the individual voters. So we need to eliminate that possibility by restricting spending on direct advocacy. With policy advocacy, the possibility of corruption is gone. Policy advocacy is directed to the public, and tries to influence public opinion. Since the candidate does not directly benefit from that expenditure, his or her vote is not directly impacted.

**6. But why couldn't that wealthy individual spend that money on direct advocacy for a candidate? This is a free country, right? Why can't I give my money to whomever I want?**

So you are taking the *corporate* speech problem out of the equation and saying that *individuals* should have no limits on direct advocacy for candidates. Two points:

First, that is not actually the law right now. Both the state and the federal election laws still have limits on how much individuals can donate to any candidate. (Currently, individuals cannot donate more than \$2,700 to any Congressional candidate.) *Citizens United* did not strike down that limit, and we think it is a reasonable limit.

Second, changing the law to remove caps on individual donations to candidates raises the risk of corruption, just as much as unlimited corporate donations does.

What *Citizens United* did was provide wealthy individuals with a handy work-around to avoid the limitations on direct donations to candidates. Now, while a wealthy individual can only donate \$2,700 directly to his preferred candidate, he can donate an unlimited amount of money to a SuperPAC which can then spend that money on direct advocacy for that candidate. This is another reason why *Citizens United* must be overturned.

**7. Still, I'm nervous about this. Your measure still looks like it is trying to prohibit speech, and *Citizens United* was designed to protect speech.**

*Citizens United* explicitly says that corporations have the right to engage in *political speech*. It does not address the right of corporations to engage in other forms of speech, like commercial speech (advertising its products, for example). Corporations are commercial entities, so allowing corporations to engage in commercial speech makes sense. Corporations are not, or should not be, political entities; they can't vote, and they should not be allowed to engage in politics directly. They are not designed to do that.

Politics is an inherently human undertaking. It is how humans relate to each other. Corporations, which were created by humans to serve humans, must be subject to human control. When they use their vast wealth and power to drown out our human voices, they do damage political discourse, and our politics are corrupted as a result.

The Free and Fair Elections initiative restores the right of all human beings to engage in political speech, and to have their voices heard. It thereby creates a far more robust, and diverse, "marketplace of ideas" out of which good political decisions can arise.