

Zachary Meagor

4 May 2026

When Corporations Speak: The Doctrinal Consequences of Reimagining Corporate Personhood

When people learn that corporations have the right to practice religion or donate money to political campaigns, the reactions usually display confusion or even disgust. After all, how could a nonorganic, profit-seeking organization practice constitutional rights? Some may assert that only natural persons with souls and emotions should have the ability to practice natural rights. In a Brennan Center article, law professor Ciara Torres-Spelliscy states, “Corporations don’t have minds, and without one it is hard to see how a corporation ‘thinks’ about any political issue,” (Torres-Spelliscy). From this perspective, it is a twisted absurdity that the Court has granted corporations constitutional rights that only humans can rightfully enjoy. On the other hand, some may oversimplify the matter, stating that corporations are viewed as associations of persons under the law. Ilya Shapiro of the Manhattan Institute wrote in the *John Marshall Law Review*, “When rights-bearing individuals associate to better engage in a whole host of constitutionally protected activity, their constitutional rights remain fully intact,” (McCarthy and Shapiro 716). As such, corporations receive enshrined rights granted to natural persons under the Constitution. Unfortunately, the issue is not so cut and dry. The concept of corporate personhood is far more complicated than either of these options, evolving through the history of the United States.

Corporate personhood is an embedded doctrine in American jurisprudence, with roots in common law rulemaking at least since the 19th century. Scholars typically point to the first explicit statement of corporate personhood in the 1886 case *Santa Clara County v. Southern*

Pacific Railroad Co., in which the justices unanimously prefaced that corporations are “persons” under the purview of the 14th Amendment (Wright 893). As the legal needs of corporations evolved throughout history, so too did their rights. Courts characterized corporations as a specific class of person to simplify the extension of various rights through adjudication (Pollman 1748).

However, the usage of the term “person” is misleading; it alludes to the corporation as a kind of human when it really signifies the corporation as a distinct entity within the legal domain. For this reason, courts treat corporate persons as “legal fictions,” creating a special designation for corporations as parties in disputes. Legal scholars argue that this practice simplifies court operations—personhood facilitates the adjudication of disputes resulting from the actions of corporations, rather than having to adjudicate cases involving individual shareholders, managers, employees, customers, or other parties (McCarthy and Shapiro 710). For example, corporations can own property, they can sue or be sued, they can be prosecuted for criminal wrongdoings, they maintain specific constitutional rights, and they are subject to a corporate tax liability (Millon 39-40). Therefore, corporations are legal entities that possess some rights which support their business operations, in addition to duties and obligations that ensure their compliance with laws and regulations.

Despite the longstanding stability of this legal fiction, the Supreme Court has begun to undermine more implicit yet essential characteristics of corporate personhood, revealing the lack of an interpretive rule defining the limits of corporate constitutional rights. In the 2010 decision *Citizens United v. Federal Election Commission*, the Court departs from the historically functional understanding of corporate personhood by granting free speech rights to corporations, eroding the barrier between the corporate legal entity and its shareholders. This risks destabilizing the doctrines of entity separation and limited liability that have allowed for

economic growth and wealth maximization, far outweighing the benefits of any newly recognized corporate rights. The result presents an essential tradeoff for corporations: either continue to gain unprecedented political rights, or maintain the legal foundation which has supported corporate efficiency since its conception.

Historically, the Court granted specific constitutional rights on a case-by-case basis to strengthen the functional utility of corporations in an evolving economy, illustrating the apolitical expansion of constitutional rights over the majority of American history (Pollman 1748-1749). The legal fiction of corporate personhood simplified judicial review because the Court had to identify whether a corporation counted as a recipient to a particular right, in addition to considering its economic importance and pragmatic effects. Through the 19th and 20th centuries, Courts denied some rights and granted others, streamlining corporations' ability to conduct business activities while limiting corporations from gaining irrelevant or unnecessary legal powers.

In common law rulemaking, Courts mainly relied upon the Fourth, Fifth, Seventh, and most importantly Fourteenth Amendment to expand rights to corporations by declaring their status as persons under these amendments (Wright 911). However, certain aspects of these amendments were not granted to corporations due to their inappropriate application to business conduct. For example, the Court pragmatically denied corporations the Fifth Amendment right against self-incrimination because this privilege would potentially impede corporate criminal prosecutions (Pollman 1748).

The general tendency of rulemaking was to grant corporations stronger economic rights, namely property protections and contract enforcement capabilities. In *Minneapolis & St. Louis Railway Co. v. Beckwith* (1889), an Iowa farmer sued a railway company for killing his livestock

and failing to pay for damages as required under state law. The company argued that the Iowa statute violated its Fourteenth Amendment rights by depriving them of property (i.e. money) without due process. The Court cited *Santa Clara*, declaring that “corporations are persons within the meaning of the [Fourteenth Amendment]” and “corporations can invoke the benefits of provisions of the Constitution and laws which guaranty to persons the enjoyment of property, or afford to them means for its protection, or prohibit legislation injuriously affecting it,” (Pollman 1743). While the corporation was found liable and eventually paid damages, the Court affirmed corporate rights to challenge laws on due process and equal protection grounds, especially in this context of property protection. This illustrates the Courts’ affording of specific rights to protect corporations against potentially burdensome economic regulations. Therefore the Court supported their ability to assert certain constitutional rights only to an extent.

By contrast, *Citizens United* reflects the promotion of political rather than functional economic rights for corporations, whereby the majority perspective fails to consider pragmatic effects of common law rulemaking. On January 21, 2010, the Court heard a case filed by the conservative political advocacy group Citizens United, which argued that a federal statute’s prohibition of corporate expenditures on political advertisements represented an unconstitutional ban on political speech (Wright 901). The Court sided with the organization, striking down limits on corporate independent expenditures under the reasoning that the government cannot restrict free speech based on corporate identity.

This practically enables corporations to spend unlimited amounts of money on political campaigns through committees known as Super Pacs (Campaign Legal Center). Despite the Court’s additional reasoning that mandated prompt disclosure would ensure voters could identify who was paying for corporate-financed election ads, legal loopholes rapidly emerged.

Corporations and wealthy interests often fund campaigns in secret through “dark money” groups whose identities are hidden from the public (Campaign Legal Center). An analysis by the nonprofit Americans for Tax Fairness found that 100 of the wealthiest American families poured around \$2.6 billion into the 2024 federal election, mostly through Super PACs, with 70% of the funds directed to Republican candidates (Canon). The report also showed that billionaire political spending has increased roughly 160-fold since the *Citizens United* decision (Canon). The political impact of *Citizens United* has been transformative, with unfettered corporate interests exercising massive influence over current politics. The underlying issue at hand is that corporate First Amendment rights do not represent utility-maximizing constitutional rights for the purposes of economic efficiency. Nor did justices adequately consider the pragmatic effects of the decision, unlike earlier rulemaking under corporate personhood.

Proponents of the *Citizens United* decision may argue that the right to free speech is a form of economic protection. Under this view, practicing political speech gives corporations the ability to advantage candidates who support specific economic policies that generally benefit business. However, common law rulemaking around corporations is primarily concerned with the essential rights of corporations to conduct business freely and efficiently. Although property protections are integral to the proper functioning of business enterprises, political speech is not inherently conducive to their profit-generating activities. In addition, the Court has historically declined to extend certain constitutional rights to corporations when doing so would create foreseeable adverse consequences, such as in its refusal to recognize a corporate right against self-incrimination. In *Citizens United*, the majority should have predicted the fact that corporate money could dominate election spending, thereby promoting wealthy interests arguably to a

point of political corruption. This is a potentially grave consequence that warrants the rejection of unlimited free speech rights.

The Court's understanding of corporate personhood as a legal tool to expand economic privileges rather than sociopolitical rights has served as an implicit rulemaking doctrine; thus, the ruling in *Citizens United* violates common law rulemaking. Even though the historically functional perspective on corporate personhood was merely assumed by most justices and not codified or expressly adopted as precedent, it maintained a consistent standard of the Court's approach to constitutional questions of corporate personhood. As a result, the current era is a radical shift in the Supreme Court's assumptions about corporate personhood, leading to newfound interpretations that grant additional rights to corporations. Yet this historical perspective is not the only lens from which to criticize the Supreme Court's rulings in *Citizens United*.

In *Citizens United*, the Court further departed from common law rulemaking by adopting a philosophical conception of corporate personhood that diverges from its historical understanding. Legal scholars define philosophical conception as explaining the essential nature of a corporation and the reasoning behind its existence (Millon 41). The underlying conception informs the Court's interpretation in debating whether to extend constitutional rights to corporations.

Historically, natural entity theory was the prevalent conception of corporate personhood in the 19th and 20th centuries, which provides that each corporation has an identity and existence that is separate from individuals who organize, operate, and own it (Chaffee 349). When the Supreme Court extended specific constitutional rights to corporations on a case-by-case basis, the natural entity theory underpinned many rulings to delineate a distinction between the

corporation as an entity and individual persons (Chaffee 359). The Court specifically noted that corporations are entities not identical to natural persons, who receive all constitutional rights in contrast to corporations' few.

In *Missouri Pacific Railway Company v. Mackey* (1888), the Court upheld a statute making railroads liable for injuries to workers caused by the mismanagement or negligence of other employees (Pollman 1747). The Court acknowledged that "corporations are persons within the meaning" of the Fourteenth Amendment, but noted that legislation may apply "additional liabilities" on "particular bodies or associations" (Pollman 1747). Therefore the Court found no violation of the Equal Protection clause arising from worker safety regulations in the especially hazardous railroad industry. By clarifying that corporations are juridical persons, the Court acknowledged their capacity to bear additional legal responsibilities, namely safety regulations.

Another point of emphasis here is that the Court applied the Equal Protection clause of the Fourteenth Amendment when referring to corporations as independent "bodies or associations," rather than applying the whole amendment as it would to natural persons. This separation prevents shareholders from asserting their own personal constitutional rights through the corporation. Without the clarification that corporations are "particular bodies," shareholders could have asserted that "additional liabilities" violate their individual liberties under the Equal Protection clause. In sum, *Missouri Pacific Railway Company* espouses natural entity theory by proposing that the corporation is a distinct type of legal person to which constitutional amendments apply in a differentiated and limited manner.

If the Court treats corporations differently than natural persons under the Constitution, then how did *Citizens United* grant the deeply personal constitutional right of free speech to corporations? The answer is that the Court has begun to see corporations not as distinct entities

but as extensions of natural persons. *Citizens United* initially avoided the pattern set by natural entity theory in cases concerning corporations' ability to practice free speech. The first case to directly address corporate free speech was *First National Bank v. Bellotti* (1978), in which the Court struck down a Massachusetts statute that prohibited corporations from funding ballot initiatives (Wright 898-899). The Court reasoned that the statute was underinclusive for singling out corporations in the ban, and also overly restrictive of unanimous shareholder decisions (i.e. the board of directors all agreeing to support a particular ballot initiative). This case demonstrates that Court rulemaking on issues of corporate free speech was decided on extremely narrow grounds, unlike *Citizens United*.

The majority in *Citizens United* adopted the aggregate theory of corporations, which posits that corporations are collections of individuals tied together through the intersection of various obligations (Chaffee 349). In other words, a corporation does not act on its own, but individual shareholders, managers, employees, and others act through it. The majority opinion states, “[t]he association of individuals in a business corporation is no different [from individuals speaking in association through the Republican or Democratic party],” (Wright 913). By fallibly equating individuals involved in business to individuals belonging to a political party, the Court adopts the premise that corporations only exist through relationships among shareholders. The reason that corporations suddenly received the entire constitutional right to free speech is because aggregate theory makes no distinction between the rights of a corporation and the rights of natural persons who constitute the corporation. Since the corporation is merely a group of individuals, the Court extended free speech to corporations to protect those associated individuals' rights to free speech.

It cannot be enough to locate natural persons associated with a corporation as a justification for extending a natural right found in the Constitution. This comparatively simple reasoning pales in comparison to the much more tailored and specific rulings for previous decisions on corporate speech as in *Bellotti*. By defaulting to the intellectually lazy idea that corporations are merely groups of individuals, the Court opens up a can of worms in future cases regarding constitutional rights. Aggregate theory does not incorporate a limit let alone any qualifying factor in determining which rights may be afforded to corporations. Conservative scholars may wholly ignore the underlying conceptions of corporate personhood or even regard this particular scholarly debate as unnecessary (McCarthy and Shapiro 707). Regardless, there exists widespread agreement among most scholars that these theories affect the way Courts evaluate the applicability of a constitutional right to the corporation. Case law demonstrates how the justices' particular adoption of one personhood conception over another alters their interpretation of the Constitution as it applies to corporations.

The adoption of aggregate theory in *Citizen United* also undermines the long-standing corporate doctrine of limited liability by eliminating the separation of the entity and its shareholders. For context, limited liability is the idea that the corporation itself is responsible for the entity's debts rather than the equity investor being personally liable (Stout 254). Therefore when the corporation goes bankrupt or is sued and owes monetary damages, creditors can only pursue corporate assets. This shields investors' personal assets from corporate debts and lawsuits, limiting losses to the amount of their investment. Limited liability provides the benefit of shielding shareholders from direct responsibility for unintended consequences of a corporation's actions. In the absence of limited liability, passive shareholders could find their personal assets at risk of creditor claims resulting from irresponsible management decisions over

which they had no control (Millon 43). This historically disincentivized passive investment into corporations, limiting the total capital that corporations could amass and direct toward growth.

When the corporation became the dominant business form in the 19th century, limited liability did not exist uniformly across states. Growth in business expansion required vast capital accumulation, leading to increasingly wide dispersal of corporate ownership (Millon 44). During this process, the average shareholder transformed from that of an active entrepreneur involved in daily business operations to many passive investors who owned relatively small holdings. As shareholders increasingly assumed passive ownership, it made less sense for courts to coerce individual shareholders into satisfying legal obligations (Millon 45). Limited liability emerged as a legal remedy to the practical matter of enforcing legal damages. It is no coincidence that the nationwide adoption of limited liability clauses occurred simultaneously with and preceding the massive wealth creation of the industrial boom and Gilded Age.

The history of limited liability shows its doctrinal power in corporate law. However, *Citizens United* indirectly threatens the foundations of limited liability because the doctrine depends on the independence of both the corporation as an entity and its shareholders. Aggregate theory removes that entity separation; according to the *Citizens United* majority, the corporation is an “association of individuals” or an extension of natural persons. If the corporation cannot be separated from individual persons, then corporate actions now represent shareholder actions, so shareholders must be held responsible for corporate actions (Wright 920).

For example, in future cases plaintiffs could argue that the corporation’s wrongdoings to the plaintiffs are also those of the individual shareholder, requiring the shareholder to pay for damages. Without the legal separation between the corporation and the shareholder, the creditor may draw upon the shareholder’s personal assets to owe the plaintiffs. Shareholders with large

ownership stakes could potentially be found liable for damages beyond millions of dollars. A diminished limited liability brings about a disincentive for investment and reduces capital accumulation. Passive investors refuse to pool money because they could be held personally liable for corporate debt. These risks threaten the stability of the corporate form, undermining corporations' ability to create wealth for society at large.

The political impact of *Citizens United* is clear: massive, unaccountable, and oftentimes unidentifiable spending by the corporate world to influence elections. The resulting corporate legal environment diverges from historical rulemaking and the natural entity theory, introducing grave legal risks that destabilize the doctrines of corporate personhood. The Supreme Court previously considered economic and pragmatic effects of granting constitutional rights to corporations, underpinned by the natural entity theory that endorsed entity separation and limited liability. Just as *Citizens United* created loopholes for wealthy corporate interests to fund political campaigns, the undefined limits of corporate personhood opened the gates to reinterpreting corporations as extensions of individuals.

Perhaps the Court's best step forward is to explicitly clarify a universal principle to describe the origin and primary function of corporations, instead of relying upon the simplistic aggregate theory of corporate personhood to justify decisions that are formally grounded in doctrine yet politically controversial. This could incorporate precedential power, aspects of the historically effective natural entity theory, and other pragmatic considerations. That way the Court has a consistent limiting principle from which to evaluate the appropriateness of constitutional rights on a case-by-case basis.

Meanwhile, conservative advocates must decide between the use of corporations as mechanisms to practice political rights or as economic vehicles with strong legal foundations.

Recent overexpansion of corporate constitutional rights in *Citizens United* may direct the Court to further dig itself into aggregate theory interpretations that weaken limited liability.

Corporations could see their shareholders personally facing company debt or damages, which discourages investing. Weakened investment protections risk decreasing the flow of capital throughout the economy, creating long-term harms greater than the gains of free speech.

Shareholders cannot have their cake and eat it too.

Works Cited

- Campaign Legal Center. “How Does the Citizens United Decision Still Affect Us in 2026?” *Campaign Legal Center*, 21 January 2026.
<https://campaignlegal.org/update/how-does-citizens-united-decision-still-affect-us-2026>.
- Canon, Gabrielle. “Billionaires Spent Record Amounts during 2024 Federal Election – Report.” *The Guardian*, 1 Apr. 2025,
www.theguardian.com/us-news/2025/apr/01/billionaires-record-spending-2024-election.
Accessed 3 March 2026.
- Chaffee, Eric C. “The Origins of Corporate Social Responsibility.” *University of Cincinnati Law Review*, vol. #85, 2017, pp. 347-373. *SSRN Electronic Journal*,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2957820.
- McCarthy, Caitlyn W. and Ilya Shapiro. “So What If Corporations Aren’t People?” *The John Marshall Law Review*, 2011, pp. 701-716. *SSRN Electronic Journal*,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1873158.
- Millon, David K. “The Ambiguous Significance of Corporate Personhood.” *Washington and Lee School of Law Scholarly Commons*, 2001, pp. 39-58.
<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1648&context=wlufac>.
- Pollman, Elizabeth. “Corporate Personhood and Limited Sovereignty.” *Vanderbilt Law Review*, vol. 74, no. 6, 2021, pp. 1727-1753.
<https://cdn.vanderbilt.edu/vu-wordpress-0/wp-content/uploads/sites/278/2021/11/19121712/Corporate-Personhood-and-Limited-Sovereignty.pdf>.
- Stout, Lynn A. “On the Nature of Corporations.” Cornell Law School. *Cornell Law Faculty Publications*, vol. #2005, no. 1, 2005, pp. 253-268.
<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1829&context=facpub>.
- Torres-Spelliscy, Ciara. “History of Corporate Personhood.” *Brennan Center for Justice*, 8 April 2014.
<https://www.brennancenter.org/our-work/analysis-opinion/history-corporate-personhood>.
- Wright, James. “A Step Too Far: Recent Trends in Corporate Personhood and the Overexpansion of Corporate Rights.” *John Marshall Law Review*, vol. 49, no. 3, 2016, pp. 889-924. *University of Illinois Chicago Open Access Repository*,
<https://repository.law.uic.edu/cgi/viewcontent.cgi?article=2594&context=lawreview>.