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A Million Corporations With a Million Campaign Ads: Citizens United, the People’s Rights Amendment, and the Speech of Non-Persons

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“Corporations are people, my friend.”

- Mitt Romney, Candidate for Republican Nomination for President, August 11, 2011

“The words people, person, or citizen as used in this Constitution do not include corporations . . .”


It has been theorized that a million monkeys working at a million typewriters could produce the complete works of Shakespeare, if provided sufficient time. But imagine if the monkeys produced some other new work, perhaps a highly persuasive political treatise. If the monkeys did so, would the government have the power to ban the copies because the writers are not people protected by the First Amendment? Although the theory does not tell us, the First Amendment does: the government could not ban the work because we, the audience, have a right to receive it. Yet those who advocate the elimination corporate personhood to stem corporate influence in elections, sanctioned by the Court in *Citizens United v. Federal Election Commission*, ignore this lesson.

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1 J.D., Columbia Law School (2008); Sidebar Editor, Columbia Law Review. The author would like to thank Caroline Mala Corbin, Gideon Hart, Jean Zachariasiewicz, and Jennifer Rhodes for their comments and edits.

2 The theory, which may also appear in the form of a single monkey provided infinite time, *see* [http://en.wikipedia.org/wiki/Infinite_monkey_theorem](http://en.wikipedia.org/wiki/Infinite_monkey_theorem) (last visited June 28, 2012), illustrates the idea that a random event can produce results that appear non-random. This Essay, however, presumes that corporate campaign ads are anything but random.
In that case, decided in 2010, the Supreme Court struck down a federal law that prohibited corporations and unions from buying ads advocating for or opposing a federal candidate. In the parlance of campaign-finance cases, the Court prevented corporations and unions from using general treasury funds to make independent electioneering communications or speech expressly advocating the election or defeat of a candidate for office. *Citizens United*, reversed decades of precedent upholding such restraints and evoked widespread condemnation.\(^3\) Indeed, it even earned a notable rebuke from the President during the State of the Union Address.\(^4\)

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\(^3\) *See, e.g.*, Kasie Hunt, John McCain, Russ Feingold diverge on court ruling, Politico (Jan. 21, 2010) (quoting sponsors of legislation struck down by *Citizens United*; quoting Senator Feingold as saying “This decision was a terrible mistake . . . , the Supreme Court chose to roll back laws that have limited the role of corporate money in federal elections since Teddy Roosevelt was president”; quoting Senator McCain as saying “I am disappointed by the decision of the Supreme Court and the lifting of the limits on corporate and union contributions”); Lawrence Tribe, “What Should Congress Do About *Citizens United*? An Analysis of the ruling and a possible legislative response” (Jan. 24, 2010) (“Talking about a business corporation as merely another way that individuals might choose to organize their association with one another to pursue their common expressive aims is worse than unrealistic, it obscures the very real injustice and distortion entailed in the phenomenon of some people using other people’s money to support candidates they have made no decision to support, or to oppose candidates they have made no decision to oppose.”) available at http://www.scotusblog.com/2010/01/what-should-congress-do-about-citizens-united/; Dan Fromkin, “Citizens United Seen as Root of Evils by Editorial Writers Across Country,” Huffington Post (Jan. 10, 2012) (collecting editorials from various newspapers criticizing *Citizens United*; *see also* Washington Post-ABC News Poll (Feb. 8, 2010) (finding 80% of American’s opposed “recent ruling by the Supreme Court that says corporations and unions can spend as much money as they want to help political candidates win elections.”). Of course, *Citizens United* enjoys at least some defenders. *See, e.g.*, George Will, “Montana bucks the court,” (May 30, 2012) (arguing “[r]easons for the Supreme Court to reconsider *Citizens United* are nonexistent”).

\(^4\) Barack Obama, President of the United States, 2010 State of the Union Address (Jan. 17, 2010) (“With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests---including foreign corporations---to spend without limit in our elections.”).
Much of the criticism has focused on the Court’s ostensible holding that corporations are people, and thus that their speech is entitled to protection under the First Amendment. This understanding of the Court’s holding in *Citizens United* has led to a proposed solution: eliminating corporate personhood. Indeed, a United States Congressman has proposed an amendment to the United States Constitution to expressly state that corporations are not people, and that they have no claim to constitutional rights. This “People’s Rights Amendment” would abolish corporations’ claim to any constitutional rights, including those First Amendment rights that *Citizens United* found were violated by federal campaign finance laws.

The proposed amendment may have some effect in limiting corporations’ claims to constitutional rights. Nevertheless, as noted above, it would not have its advocates’ hoped for effect of reversing *Citizens United* or preventing corporations and other artificial entities from spending unlimited sums to engage in electioneering. That is because advocates of the People’s Rights Amendment, and of stripping corporate personhood generally, forget that speech involves

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7 Moreover, reversing *Citizens United* and capping corporate political expenditures would not affect expenditures by the wealthy, which have exploded in the wake of the case. See Nicholas Confessor, “Campaign Aid Is Now Surging Into 8 Figures,” N.Y. Times, June 13, 2012.
two parties—a speaker and a listener. The First Amendment does not protect the freedom of the speaker; it protects the freedom “of speech.” As the Supreme Court has recognized, both parties have an interest, and a constitutional claim, to the speech. The listener’s interest is distinct and not derivative of the speakers’. It is the listener’s right to be presented with existing information, regardless of how the information came into being. Thus, courts have held that “listeners’ rights,” or a “right to receive,” fall under the First Amendment’s guard. Importantly, the Supreme Court has found that a listener has a right to hear speech even where there is no constitutionally protected speaker. Thus, eliminating corporate personhood will not provide legislatures the power to regulate corporate speech—any interested listener could simply sue to hear the silenced speech.

This is not to say, however, that any restraint on speech would infringe a listener’s right to hear it. A listener’s right to hear is a mirror of a speaker’s right to speak and, thus, where the legislature may regulate speech in the face of a speaker’s interest, it may do so in the face of a listener’s interest as well. For example, a listener would have no greater claim to hear speech that was the result of a corrupt exchange between a speaker and a candidate than the speaker

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8 This Essay does not address another possible problem with such a plan: the effect of the elimination of corporate personhood on the free speech rights of corporate members. For example, others have argued that corporate personhood is not really the issue in Citizens United, and that a corporation’s free speech rights are simply stand-ins for the free speech right of its members. See, e.g., Citizens United, 130 S. Ct. at 928 (Scalia, J., dissenting) (defending corporate speech rights by arguing “the individual person’s right to speak includes the right to speak in association with other individual persons”). Under such a view, the effect of eliminating corporate personhood would at least be ambiguous, as the association may still be able to assert the rights of its members who, presumably, would retain their rights. Nevertheless, a possible interpretation, and likely intent, of the People’s Rights Amendment would cut off that possibility by treating corporations as independent legal entities for First Amendment purposes, as they are for all other legal purposes.

9 U.S. Const. amend. I.


11 See Kleindienst v. Mandel, 408 U.S. 753, 764 (1972) (noting “Court’s previous decisions concerning the ‘right to receive information’ ”).

12 See infra Part ____.
would have to make this corruptly sold utterance. Accordingly, narrowly tailored restraints on campaign finance born out of a compelling state interest will stand even in the face of a listener’s challenge.

This Essay explores the likely effect of eliminating corporate personhood on the Court’s campaign finance jurisprudence, and why such effect is likely to be nonexistent due to listener rights. Part I discusses the Court’s listener’s right doctrine, its application where there is no constitutionally protected speaker, and its limits. Part II discusses Citizens United, the similarity of its rationale to listener rights cases, and the effect an elimination of corporate personhood would render on its reasoning. Part III discusses other forms of campaign finance regulations and how they would be analyzed in the face of a listener challenge.

Eliminating corporate personhood may be cathartic. It may also have desirable effects on corporations’ claims to rights guaranteed under the Constitution such as those under the Fourth or Fifth Amendment. It will not, however, eliminate constitutional protection for speech uttered by corporations. The speech itself is protected regardless of any constitutional personhood of the speaker---even if the drafter were a monkey at a keyboard.

I. Listener Rights

The First Amendment’s guarantee of freedom of speech if often justified on the grounds that free speech allows for the discovery of truth. Through an unfettered debate, ideas can be tested, falsities exposed, and the truth, or a closer approximation to it, may be learned. In a democracy such as ours, where each individual holds an important power to translate his or her understanding of the world into governmental action, free speech also has the benefit of widely distributing these truths. As Madison stated,

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will
forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

In recognizing this role played by the First Amendment, the Supreme Court has often looked to the interests of listeners, even when the petitioners before the Court sought to protect their own speech. For example, in *Thornhill v. State of Alabama*, the Supreme Court struck down a state statute prohibiting the picketing of a business. The petitioner before the court was a picketer who was arrested under the statute. Although the person whose interest was before the court was undoubtedly a speaker, the Court pointed to the interests of listeners, stating:

> The safeguarding of [free speech] rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government.

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13 9 Writings of James Madison 103 (G. Hunt ed. 1910).
14 310 U.S. 88 (1940)
15 *Id.* at 91.
16 *Id.* at 92--95.
17 *Id.* at 96; see also *id.* at 104 (“The range of activities proscribed by Section 3448, whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern. It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests.”).
In so reasoning, the Court ignored the State’s protest that the speaker could not point to the interest of listeners in arguing his case. ¹⁸

Similarly, in *Martin v. City of Struthers*, ¹⁹ the Court considered an appeal from a woman who was arrested for going home-to-home and distributing leaflets espousing her religious beliefs. ²⁰ A city ordinance prohibited such door-to-door distribution. ²¹ In striking down the ordinance, the Court again pointed not only to the distributor’s right to spread her religious beliefs, but to the potential receiver’s right to receive such information. It stated, “[w]e are faced in the instant case with the necessity of weighing the conflicting interests of the appellant in the civil rights she claims, as well as the right of the individual householder to determine whether he is willing to receive her message . . . .” ²² The Court noted that a potential receiver could indeed seek out this information in other ways. Nevertheless, it found that the receiver had a right to have this information dropped at his house, saying, “[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.” ²³ The Court found that the ordinance interfered with the rights of an individual resident to decide for himself whether to allow an uninvited leafletter to his home to inform him about whatever the leafletter desired. ²⁴

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¹⁸ *Id.* at 96.
¹⁹ 319 U.S. 141 (1943).
²⁰ *Id.* at 142.
²¹ *Id.*
²² *Id.* at 143.
²³ *Id.* at 146-47.
²⁴ *Id.* at 141-42. (“Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants.”).
Given *Struther*’s attention to the interests served by the recipients of speech, it was not difficult for the Court to find that a listener had a right to sue to receive speech denied to him by the Government. In *Lamont v. Postmaster General*, the Court found that a law which barred delivery of propaganda to addresses, absent the addressee’s provision to the post office of an express acceptance of the material, violated the addressee’s First Amendment Rights. The Court recognized, and placed significant emphasis on, the law’s requirement that the addressee affirmatively express a desire to receive the information. Nonetheless, the Court did not rely on finding that this compelled speech violated the addressee’s First Amendment rights, although it could have based on Court precedent. Rather, the Court noted that mandated expression would “have a deterrent effect,” i.e., would deter an addressee from receiving the propaganda.

Indeed, only four years later, in *Stanley v. Georgia*, the Court stated, “[i]t is now well established that the Constitution protects the right to receive information and ideas,” citing *Martin* and *Lamont*.

Since that time, the Court has routinely found that listeners have the right to assert claims for violation of the First Amendment where the Government has prevented them from hearing speech, even if the content of the speech could be obtained from other sources.

A. An Independent Right

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25 381 U.S. 301 (1965).
26 *Id.* at 305 (“We conclude that the Act as construed and applied is unconstitutional because it requires an official act (viz., returning the reply card) as a limitation on the unfettered exercises of the addressees’ First Amendment Rights.”).
27 See *id.* at 307 (“We rest on the narrow ground that the addressee in order to receive his mail must request in writing that it be delivered.”)
29 See *Lamont*, 381 U.S. at 307.
30 394 U.S. at 557 (1969)
31 *Id.* at 564.
Nevertheless, some have questioned whether listener rights are truly independent rights of the listener, or whether they merely allow the listener to sue to protect the speaker’s right. The Court, however, has found that the listener’s right is distinct and not derivative of the speaker’s right. “The constitutional guarantee of free speech ‘serves significant societal interests’ wholly apart from the speaker’s interest in self expression[;] . . . [b]y protecting those who wish to enter the marketplace of ideas from government attack, the First Amendment protects the public’s interest in receiving information.”

In *Board of Education v. Pico*, for example, the Court considered a challenge by students to a school’s decision to remove books from the school library. The Court noted that the First Amendment protects a right to receive information. Importantly, the Court found this right emanates from the First Amendment in two ways:

This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the sender’s First Amendment right to send them: The right of freedom of speech and press . . . embraces the right to distribute literature, and necessarily protects the right to receive it. . . . More importantly, the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.

Accordingly, the Court did not need to determine whether the books’ authors or the school were the relevant speakers involved. Rather, the Court focused on the students’ right to receive and read the books, subject only to reasonable restrictions created by the school.

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35 457 U.S. 853.
36 *Id.* at 855-56.
37 *Id.* at 867.
38 *Id.* at 867 (emphasis in original).
Similarly, in *Procunier v. Martinez*, the Court sidestepped the question of whether prisoners enjoyed the same First Amendment rights as nonprisoners, or whether their status as prisoners required courts to employ some special test in reviewing prison regulations. Instead, the Court focused on a “narrower” issue, whether the recipients of the prisoners’ mail had their rights violated by the prison rules. The Court noted that “[i]n the case of direct personal correspondence between inmates and those who have a particularized interest in communicating with them, mail censorship implicates more than the right of prisoners.”

The Court continued, Both parties to the correspondence have an interest in securing that result, and censorship of the communication between them necessarily impinges on the interest of each. Whatever the status of a prisoner’s claim to uncensored correspondence with an outsider, it is plain that the latter’s interest is grounded in the First Amendment’s guarantee of freedom of speech. And this does not depend on whether the nonprisoner correspondent is the author or intended recipient of a particular letter, for the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with the intended communication.  

The Court went on to note, however, that the case did not involve a “right to hear,” because the prisoners did not merely assert a right to receive outside material, but also sought to send material as well. Nevertheless, *Procunier* was narrowed by *Thornburgh v. Abbott*, where the Court ruled that prison restraints on incoming mail need only meet a “reasonableness” standard. *Procunier*, however, continues to govern prisoners’ outgoing mail. Accordingly, as narrowed by

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40 *Id.* at 408 (“In determining the proper standard of review for prison restrictions on inmate correspondence, we have no occasion to consider the extent to which an individual’s right to free speech survives incarceration, for a narrower basis of decision is at hand.”)
41 *Id.* at 408 (footnote omitted).
42 *Id.* at 408—09.
43 *Id.* 409.
Thornburgh, Procunier’s reasoning is essentially that of a listeners’ case: upholding the right of non-prisoners to receive mail from inmates.\textsuperscript{45}

Finally, in \textit{Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel},\textsuperscript{46} the Court considered a challenge to state rules prohibiting pharmacists from advertising the price of drugs.\textsuperscript{47} A prior suit by pharmacists, i.e., speakers, had failed in district court, and the pharmacists had not appealed that decision.\textsuperscript{48} Nonetheless, the Court considered a separate challenge by a group of consumers, would-be listeners for the advertisements.\textsuperscript{49} The Court asked “whether, even assuming that First Amendment protection attaches to the flow of drug price information, it is a protection enjoyed by the appellees as recipients of the information, and not solely, if at all, by the advertisers themselves who seek to disseminate that information.”\textsuperscript{50} The Court held that the recipients indeed had a right that was not simply derivative of the senders. “[W]here a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both.”\textsuperscript{51} The Court, over the dissent of Justice Rehnquist, further found that the right could be infringed even if the listener could obtain the information through other channels.\textsuperscript{52} With regard to the state’s purported interest in preventing price shopping by consumers and the consequent devolution of professionalism among pharmacists, the Court stated that “the State’s protectiveness of its citizens rests in large measure on the advantages of

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\item So construed, \textit{Procunier} presents a case where the speaker’s right is derivative of the listener’s. \textsuperscript{45}
\item 425 U.S. 748 (1976). \textsuperscript{46}
\item \textit{Id.} at 749—50. \textsuperscript{47}
\item \textit{Id.} at 753 (discussing \textit{Patterson Drug Co. v. Kingery}, 305 F. Supp. 821 (W.D. Va. 1969)). \textsuperscript{48}
\item \textit{Id.} at 753 (“The present, and second, attack on the statute is one made not by one directly subject to its prohibition, that is, a pharmacist, but by prescription drug consumers who claim that they would greatly benefit if the prohibition were lifted and advertising freely allowed.”) \textsuperscript{49}
\item \textit{Id.} at 756. \textsuperscript{50}
\item \textit{Id.} at 756. \textsuperscript{51}
\item \textit{Id.} at 756 n. 14 (“We are aware of no general principle that freedom of speech may be abridged when the speaker’s listeners could come by his message by some other means, such as seeking him out and asking him what it is. Nor have we recognized any such limitation on the independent right of the listener to receive the information sought to be communicated.”) \textsuperscript{52}
\end{itemize}
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their being kept in ignorance,” an interest the Court found illegitimate.\textsuperscript{53} Consequently, the Court went on to strike down the statute in question.\textsuperscript{54}

As the Court has routinely found, listeners enjoy an independent right to hear speech. That right is not derivative of the speaker’s right and may be asserted even where the speaker has no interest in asserting it. So long as the speech exists, the government may not prevent a listener’s access to it.

B. Listeners Without Speakers

In each of the above cases where the Court found that a listener had a right to hear speech, there was an identifiable, if absent, speaker. In \textit{Virginia State Board of Pharmacy}, the pharmacists would be the future advertisers. In \textit{Procunier}, the prisoners would be sending letters to nonprisoner readers. In \textit{Pico}, authors had written the books in dispute, and the school exercised editorial control by selecting what books to include in the library in the first place. Accordingly, it may not be difficult to conclude that a listener right is dependent on the existence of separate speaker, possessing his own independent right to speak. The Court has, at least once, even appeared to condition listener rights on the existence of a constitutionally protected speaker, stating, “\textit{where a speaker exists}, as is the case here, the protection afforded is to the communication, to its source and to its recipients both.”\textsuperscript{55} Such a reading, however, would be mistaken. Indeed, the Court has explicitly found that listeners have the right to hear speech, even where the Court finds no constitutional protection for the speaker.

In \textit{Lamont v. Postmaster General}, for example, the Court found that a recipient of material deemed propaganda had a right to receive that material without expressly informing the

\textsuperscript{53} \textit{Id.} at 769.
\textsuperscript{54} \textit{Id.} at 770.
\textsuperscript{55} \textit{Va. State Bd. of Pharmacy}, 425 U.S. at 756.
post office of his desire to receive it.\textsuperscript{56} The Court never considered whether the speakers in that case enjoyed protection under the First Amendment. Indeed, it is at least questionable whether the speakers would have any such protection, as the authors of the material were hostile foreign governments.\textsuperscript{57} Nor does it appear that the Court’s failure to consider the free speech rights of the speakers was an oversight. As Justices Brennan and Goldberg noted in their concurrence, “[t]hese might be troublesome cases if the addressees predicated their claim for relief upon the First Amendment rights of the senders.”\textsuperscript{58} The Justices continued:

To succeed, the addressees would then have to establish their standing to vindicate the senders’ constitutional rights, as well as First Amendment protection for political propaganda prepared and printed abroad by or on behalf of a foreign government. However, those questions are not before us, since the addressees assert First Amendment claims in their own right: they contend that the Government is powerless to interfere with the delivery of the material because the First Amendment ‘necessarily protects the right to receive it.’\textsuperscript{59}

Accordingly, the Court was aware of the question of the speakers’ constitutional rights, but found the question unnecessary to answer because the listener had an independent right that did not turn on the existence of the speaker’s right.

The Court went further in \textit{Kleindienst v. Mandel},\textsuperscript{60} where it considered a challenge by professors to the prohibition of a foreign academic’s entrance into the United States.\textsuperscript{61} The foreign academic, Ernest E. Mandel, had been invited to come speak at Stanford, but was denied a visa to enter the country under a statute that barred access of certain foreigners without a waiver from the Attorney General.\textsuperscript{62} University professors, all United States citizens, and Mandel then sued, asserting that the law “deprive[d] the American plaintiffs of their First and Fifth

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\item \textsuperscript{56} 381 U.S. at 305.
\item \textsuperscript{57} Id. at 303.
\item \textsuperscript{58} Id. at 307 (Brennan, J., and Goldberg, J., concurring).
\item \textsuperscript{59} Id. at 307-08 (citations omitted).
\item \textsuperscript{60} 408 U.S. 753(1972).
\item \textsuperscript{61} Id. at 757.
\item \textsuperscript{62} Id. at 754—54, 757.
\end{itemize}
Amendment rights[;] specifically, these plaintiffs claim[ed] that the statutes prevent[ed] them from hearing and meeting with Mandel in person for discussions, in contravention of the First Amendment,” among other things. 63 Indeed, “the American appellees assert[ed] that they sue[d] to enforce their rights, individually, and as members of the American public, and assert[ed] none on the part of the invited alien.” 64

The Court first noted that “[i]t is clear that Mandel personally, as an unadmitted nonresident alien, had no constitutional right of entry to this country as a nonimmigrant or otherwise.” 65 Accordingly, the Court considered whether the American professor appellees had standing to assert a violation of the First Amendment, even if Mandel had no independent right to assert any such violation. 66 The Court located in its precedents a “right to receive information and ideas,” 67 and found that the appellees had standing to challenge the denial of entry as a violation of their own First Amendment rights. 68

Finally, in Virginia State Board of Pharmacy, the Court considered the rights of consumers to receive advertising on drug prices. 69 The Court did so even though a drug retailing company and a pharmacist had previously filed and lost a suit on behalf of their own rights as speakers. 70 The Court noted that the previous claim failed at the district level and had not been

63 Id. at 760.
64 Id. at 762 (quotation marks omitted).
65 Id. at 762.
66 Id. at 762—65.
67 Id. at 762 (quoting Martin v. City of Struthers, 319 U.S. 141, 143 (1943); Stanley v. Georgia, 394 U.S. 557, 564 (1969)).
68 Id. at 764—65. The Court went on to uphold the denial of visa on the ground that it was an exercise of a legitimate state power to exclude aliens and that the Attorney General had a “facially legitimate and bona fide” reason for denying entry to Mandel: he had violated the terms of previous visa. Id. at 769.
69 425 U.S. at 753.
70 Id. at 753 (discussing Patterson Drug Co. v. Kingery, 305 F. supp. 821 (W.D. Va. 1969).
appealed,\textsuperscript{71} and that the case was decided under a now rejected precedential backdrop that questioned the protections for commercial speech.\textsuperscript{72} Nonetheless, the Court expressed no opinion on whether the earlier case was wrongly decided. Rather, the Court dealt solely with the interests of the listeners, apparently believing that a decision on the rights of the speakers was neither binding nor informative.\textsuperscript{73}

Consequently, the Court’s limitation of listener rights to instances “where a speaker exists”\textsuperscript{74} is best understood as conditioning listener rights to the existence of speech, not the existence of constitutionally protected speaker rights. The Court has never insinuated, nor has anyone apparently suggested, that a listener’s right extends to the forceful creation of speech from nonwilling parties. For example, no one can seriously claim a teacher would have a constitutional right to force a student to salute a flag simply because the teacher desired to watch such an event. Such forced action would instead run afoul of the student’s First Amendment rights.\textsuperscript{75} Nonetheless, where information exists and speech is created, a listener has a right to hear that speech, regardless of the status of the creator’s constitutional claim to distributing it.

\textit{C. Limits on Listener Rights}

As the previous discussion acknowledges, a listener’s right is not infinite. It does not include the right to force others to speak. Nor, for that matter, does it appear to offer any greater protection for speech than that provided to a speaker, except in rather special circumstances.

\textsuperscript{71} \textit{Id.} at 753.
\textsuperscript{72} \textit{Id.} at 758-59.
\textsuperscript{73} It would be difficult to square the Court’s holding in \textit{Virginia State Board of Pharmacy}, however, with the district court’s decision in \textit{Patterson Drug Co.} After finding that the consumers had a legitimate First Amendment claim to receive advertising, the Court went on to hold that commercial speech also deserves the protection of the First Amendment. 425 U.S. at 770. Such a holding clearly overrules the district court’s reasoning in rejecting the pharmacists’ free speech claim that “regulation of commercial advertising does not intrude upon First Amendment rights of free speech.” \textit{Patterson Drug Co.}, 305 F. Supp. at 825.
\textsuperscript{74} 425 U.S. at 756.
Instead, as the Court has interpreted listener rights, they are subject to the same standards of limitation and unprotected categories as speakers’ rights.

Generally, the Supreme Court has applied typical First Amendment tests when it considers the constitutionality of a restraint on listener rights. For example, in *Virginia State Board of Pharmacy*, the Court, after finding that the consumers had a right to hear advertising, went on to note a number of restraints on advertising that the State could nevertheless adopt. The Court stated that, “[t]here is no claim, for example, that the prohibition on prescription drug price advertising is a mere time, place, and manner restriction.” In support, the Court cited a number of speaker’s rights cases upholding such restrictions, without any hint from the Court that a different analysis should apply to listeners. The Court further stated, “[n]or is there any claim that prescription drug price advertisements are forbidden because they are false or misleading in any way,” stating that “[u]ntruthful speech, commercial or otherwise, has never been protected for its own sake.” Moreover, the Court suggested restraints on advertisements that propose illegal transactions or restraints on electronic broadcast media would survive challenge by a listener.

Although *Virginia’s* discussion is dicta, the Court has directly applied the First Amendment’s tests derived from speaker’s cases, without alteration, when considering listener

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76 *Id.* at 771.
78 *Id.* at 771. (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) (finding First Amendment did not prohibit defamation claim against publisher)).
challenges. In *Procunier*, the Court, after deciding to focus on the rights of nonprisoners engaged in communication with prisoners, decided to “turn for guidance, not to cases involving questions of ‘prisoners’ rights,’ but to decisions of this Court dealing with the general problem of incidental restrictions on First Amendment liberties imposed in furtherance of legitimate governmental activities.”

The Court then went on to discuss *Tinker v. Des Moines Independent Community School District*, a case involving the speech rights of students to wear antiwar armbands; *Healy v. James*, a case involving students seeking University recognition for their student club; and *United States v. O’Brien*, a case considering an individual’s expressive conduct in burning his Selective Service registration card. From these cases, the Court drew the general principal that “incidental restrictions on First Amendment liberties by governmental action in furtherance of legitimate and substantial state interest other than suppression of expression” were constitutional. The Court then analyzed the restrictions on prisoner mail under this test, comparing the legitimate governmental interest in maintaining order in the jail to the government’s interest in maintaining order in schools, and considering whether the restraints were only those necessary to protect the legitimate government interests outlined by the Court.

The Court gave no thought to the possibility that such cases may be inapplicable when considering the nonprisoner’s right to receive information from the prisoners, or vice versa.

Similarly, in *Kleindiest*, the Court upheld the denial of entry to a foreign academic against a challenge by American professors. After finding that the American professors had a legitimate First Amendment interest in having a face-to-face discussion with the foreign

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80 416 U.S. at 409.
81 *Id.* at 409—10 (discussing 393 U.S. 503 (1969)).
82 *Id.* at 410 (discussing 408 U.S. 169 (1972)).
83 *Id.* at 410—11.
84 *Id.* at 411—12.
85 *Id.* at 413—14.
86 408 U.S. at 769—70.
academic, the Court analyzed the denial of entry by analyzing the government’s interest in regulating immigration.\textsuperscript{87} The majority did not apparently ask whether the immigration statute served a compelling state interest and was narrowly tailored to serve that interest, and the dissent criticized the majority for failing to do so.\textsuperscript{88} The majority, however, gave no indication that its failure stemmed from the positioning of the case as a listener rights case.

Similarly, in \textit{Pico}, the Court saw no issue with citing cases considering speakers’ rights in considering students’ rights to receive books located in the school library, without censorship from the school.\textsuperscript{89} Instead, the Court, noting that student speaker cases have recognized certain legitimate pedagogical interests, asked whether removing the school books similarly served such an interest, or whether the school was instead motivated by narrow partisan or political interest, or sought to deny the students access to ideas with which the school disagreed.\textsuperscript{90}

From these cases, it is apparent that a listener’s rights case is not fundamentally different from a typical speaker’s rights case. Rather, the classification of a case as one involving listener’s rights only implies that a plaintiff has a constitutionally-legitimate interest in speech; it does not tell one whether the government restraint on that speech is constitutional.

There are, however, cases where a listener may have greater rights than a speaker. First, where the government’s interest in restraining the speech is to protect uninterested listeners from hearing objectionable speech, the listener may have a greater right to hear the speech than a speaker would have to utter it. For example, in \textit{Stanley v. Georgia}, the Court considered whether

\textsuperscript{87} \textit{Id.} at 766-67.
\textsuperscript{88} \textit{Id.} at 777 (Marshall, J., and Brennan, J., dissenting) (\textit{“It is established constitutional doctrine, after all, that government may restrict First Amendment rights only if the restriction is necessary to further a compelling governmental interest.”}).
\textsuperscript{89} 457 U.S. at 863--65 (citing \textit{West Va. Bd. of Educ. v. Barnette}, 319 U.S. 624 (1943) (considering right of student to refuse to pledge allegiance to the flag); \textit{Tinker v. Des Moines School Dist.}, 393 U.S. at 507 (considering right of students to wear antiwar armbands)).
\textsuperscript{90} \textit{Id.} at 869—71.
a state could prosecute an individual for possessing obscenity in his home. The Court recognized that “obscenity is not protected by the First Amendment.” Nonetheless, the Court noted that prior precedents upholding restraints on obscenity considered only distributors of obscenity, in other words, speakers. Instead, in the case at hand, there was no allegation that the defendant sought to distribute these materials, but instead only possessed them privately. Finding the possession was constitutionally protected, the Court reasoned:

Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one’s own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch.

In effect, Stanley stands for the proposition that while the government may protect would-be listeners from certain highly-undesirable speech, the government may not do so where the listener in-fact desires to hear that speech and does so in a way that does not implicate any other non-consenting listeners. The government’s interest is limited to protecting non-consenting individuals. The listener the government seeks to protect effectively waives that protection when he affirmatively seeks out the speech. Further, although Stanley only considered the right to possess obscenity, its reasoning could also include restraints on hearing other forms of speech where the government’s interest is the protection of would-be listeners, and all the would-be listeners, or their legal guardians, actually desire to hear the speech. Just as obscenity restraints were upheld as necessary to protect the State’s interest in “[t]he well-being of its children” from

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92 Id. at 560.
93 Id. at 560-61 (discussing Roth v. United States, 354 U.S. 476 (1957); Smith v. California, 361 U.S. 147 (1959); Jacbells v. Ohio, 378 U.S. 184 (1964); Ginsberg v. New York, 390 U.S. 629 (1968); Alberts v. California, 354 U.S. 476 (1957)).
94 Id. at 565.
95 Id. at 565.
hearing utterances of obscenity, restrain on “fighting words” seek to protect against the hearing of such words by an inflammable individual. Thus a listener would have a stronger claim to hear fighting words than a speaker would have to utter them.

In sum, while listener rights cases generally do not alter a court’s analysis of the constitutionality of a restraint on speech, they may alter the analysis where the government’s purported interest is in protecting would-be listeners. Where a listener desires to hear such speech, and there is no threat of distribution to other, non-willing listeners, the government’s reason for regulating the speech is nonexistent. Nevertheless, where the reason for restraining the speech is not focused on the interests of the listener, or where the speech necessarily will reach a wider audience than the single desireous listener, a court’s constitutional analysis is not altered by the fact that the claim is brought by a listener.

Second, a listener may also have a right to decline to listen. In one sense, this is the opposite of a listener’s right, which is generally used as a right to receive information that the government has hidden. Here, rather, it would be a right to decline to hear information that a speaker wishes to impart, and that the government either allows to be disseminated or even mandates. Nevertheless, one scholar has noted a right not to listen may be as much a part of a listener’s right as the right against compelled speech is part of the speaker’s right.

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98 Although it would be difficult to finds words that a listener desired to hear and which were not distributed to any other party could be capable of “inflict[ing] injury” or “incit[ing] an immediate breach of the peace” Id. at 572.
Although the Court has only loosely sketched out such a right, it has found some support, particularly where the listener is captive.\textsuperscript{100} Flushing out the parameters of this right is beyond the scope of this Essay. Nonetheless, it is worthwhile to see the parallel limit placed upon a listener and a speaker. As stated above, a listener has no constitutional right to compel an unwilling speech. Similarly, a speaker has no constitutional right to compel an unwilling listener. Admittedly, a speaker’s unwillingness is obvious from the fact that they are not engaged in speaker, whereas as listener’s unwillingness is less apparent. Further, we do not allow a “heckler’s veto”:\textsuperscript{101} where a listener is not captive, we require an unwilling listener to exercise their right to decline to listen by walking away or ignoring the speech. Thus, certain facts about the nature of speakers and listeners require that the rights against compelled speech or listening be exercised in varying ways. Still, all that is necessary to note for the point of this essay is that a listener may have a constitutional interest in avoiding speech that could trump a speaker’s.

While listeners have constitutionally protected rights to hear existing speech, those rights largely mirror speakers’ rights to speak. Accordingly, they are subject to similar constraints. Listeners may not compel speakers, just as speakers may not compel listeners. Moreover, as with

\textsuperscript{100} See Lehman v. City of Shaker Heights, 418 U.S. 298, 305--08 (1996) (Douglas, J., concurring) (finding passengers on public bus were captive audience, and thus city could decline to include political advertisement on busses; stating “[w]hile petitioner clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it”); Frisby v. Schultz, 487 U.S. 474, 485 (1988) (“There is simply no right to force speech into the home of an unwilling listener.”); F.C.C. v. Pacifica Found., 438 U.S. 726 (1978) (stating “in the privacy of the home, . . . the individual’s right to be left alone plainly outweighs the First Amendment rights of an intruder”); Rowan v. U.S. Post Office Dept., 397 U.S. 728, 736 (1970) (“But the right of every person ‘to be let alone’ must be placed in the scales with the right of others to communicate.”).

\textsuperscript{101} See Rosenbaum v. City and County of San Francisco, 484 F.3d 1142, 1158 (9th Cir. 2007) (“A ‘heckler’s veto’ is an impermissible content-based speech restriction where the speaker is silenced due to an anticipated disorderly or violent reaction of the audience.”)
speaking, the government may restrain listening where there is a compelling state interest and the
law is narrowly tailored to meet that interest.

II. *Citizens United*, a Listener’s Rights Case?

The challenge to campaign finance laws brought in *Citizens United v. Federal Election
Commission* was not brought by a potential listener, but by a nonprofit corporation that sought to
air a politically charged film attacking then potential democratic presidential nominee Hillary
Clinton. 102 Admittedly, the existence of *Citizens United* therefore depended on the corporation’s
standing. Nevertheless, given the Court’s analysis in *Citizens United*, there is little reason to
believe the outcome would have been any different had the case been brought by a voter desiring
to watch the movie.

A. Campaign Finance Law Pre-*Citizens United*

It is worth providing a brief sketch of campaign finance law before *Citizens United*. Federal laws limiting the ability of corporations to spend money in attempts to influence votes
have existed since at least 1907. 103 The laws were then extended to cover candidates and natural
persons. 104 Some laws required disclosure of expenditures, others limited or entirely prohibited
them. 105

The first time the Supreme Court intervened to adjudicate the constitutionality of these
laws occurred in 1976 in *Buckley v. Valeo*. 106 In that case, the Court considered, *inter alia*, the
constitutionality of (1) limitations on contributions, or money given directly to a candidate or

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102 130 S. Ct. 876, 886—87 (2010).
103 See *United States v. Int’l Union United Autoworkers, Aircraft and Agricultural Implement
Workers of America (UAW-CIO)*, 352 U.S. 567, 575 (1957) (discussing 34 Stat. 864, which
prohibited “any national bank, or any corporation organized by authority of any laws of
Congress, to make a money contribution in connection with any election to any political office”).
104 *Id.* at 575—77.
105 *Id.*
controlled by the candidate, and (2) limitations on independent expenditures, or expenditures not coordinated with a candidate or “authorized or requested” by the candidate, on communications “relative to a clearly identified candidate.”

In a lengthy opinion, the Court ultimately upheld limits on contributions, but struck down limits on independent expenditures. The Court first reasoned that both limits implicated First Amendment concerns even though they regulated only the expenditure of money. The Court relied on the facts that it had “never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment,” and the fact that the law did not simply incidentally restrain speech, but, rather that its primary purpose “involve[d] ‘suppressing communication.’” The Court, however, found that restraints on contributions were constitutional because such restraints “entail[] only a marginal restriction upon the contributor’s ability to engage in free communication,” and the government had a sufficiently compelling reason for the restriction: “to limit the actuality and appearance of corruption resulting from large individual financial contributions.”

107 Id. at 7, 37 n.43.
108 Id. at 29, 50.
109 Id. at 16--17. Justice White dissented from this conclusion, arguing that, because the restraints were “neutral as to the content of speech and [were] not motivated by fear of the consequences of the political speech of particular candidates or of political speech in general,” the Government’s regulation was of conduct and the restraints on speech were only incidental. Id. at 259—60.
110 Id. at 20. In noting the marginal effect, the Court considered the expressive value in the physical act of donating money, but found any such expression to be minimal, particularly where donations were not entirely prohibited, but simply limited. Id. The Court rejected the argument that the donor could rely on the speech ultimately generated by the donation, because, “[w]hile contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.” Id. at 21.
111 Id. at 26. Because the Court found this interest sufficiently compelling, it did not consider the Governments other purported interests in limiting contributions: “mut[ing] the voices of affluent persons and groups in the election process [to] equalize the relative ability of all citizens to affect
In contrast, the Court found that limits on independent expenditures violated the First Amendment. The Court first noted an expenditure limit entailed a greater restraint than contribution limits: “A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.”\textsuperscript{112} The Court then construed the limit on communications “relative to a clearly identified candidate” to mean “advocating the election or defeat of a candidate,” i.e., “express advocacy.”\textsuperscript{113} Finally, under such a construction, the Court found the limitation on independent expenditures did “not provide an answer that sufficiently relates to the elimination” of the dangers argued by the government because, unlike the statute’s total ban on large contributions, the ban on independent expenditures prohibited “only some large expenditures.”\textsuperscript{114}

So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views. . . . It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate’s campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office.\textsuperscript{115}

Beyond finding the statute failed to fulfill its purported purpose, the Court then went on to reject the government’s argument that independent expenditures presented a threat. Rather, it

\textsuperscript{112} Id. at 19.
\textsuperscript{113} Id. at 41-42. The Court noted the term “relative to a clearly identified candidate” may have been insufficiently precise to survive a vagueness challenge, unless it was construed in light of other language in the statute’s section referring to “advocating the election or defeat of such candidate,” and required an “explicit and unambiguous reference to the candidate.” Id. at 41-44.
\textsuperscript{114} Id. at 45.
\textsuperscript{115} Id. at 45.
found that “the independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions,” because independent expenditures, which by definition are not under control of the candidate, would prove less valuable to a candidate.\footnote{Id. at 46—47.} The Court then rejected the government’s argument that it had an interest in “equalizing the relative ability of individuals and groups to influence the outcome of elections,” finding such concept “wholly foreign to the First Amendment.”\footnote{Id. at 48—49.} In sum, 	extit{Buckley} upheld the statutory limits on contributions as necessary to prevent corruption, but it struck down the statutes limit on independent expenditures because the Court found no sufficient danger from such expenditures and that, even if such danger existed, the statute left too large of a loophole by barring only express advocacy.

While 	extit{Buckley} created a distinction between contributions and independent expenditures, it did not consider the question of whether different rules applied to corporations. A series of cases following 	extit{Buckley} confronted that question, at least implicitly. The issue was first addressed in 	extit{First National Bank of Boston v. Bellotti}, which struck down a state statute forbidding corporations from expending funds to influence a referendum vote, except “one materially affecting any of the property, business or assets of the corporation.”\footnote{435 U.S. 765, 767—68, 783 n.18 (1978).} The Court reasoned that voters, who were to directly decide the referenda, could benefit from the corporation’s input.\footnote{Id. (“Certainly there are voters in Massachusetts, concerned with such economic issues as the tax rate, employment opportunities, and the ability to attract new business into the State and to prevent established businesses from leaving, who would be as interested in hearing appellants’ views on a graduated tax as the views of media corporations that might be less knowledgeable on the subject.”).}
Nevertheless, when confronting questions related to finance of candidate’s political campaigns, the Court followed *Buckley’s* framework. The Court upheld limits on contributions by corporations,\(^{120}\) and upheld special requirements for corporations with regard to their contributions.\(^{121}\) The Court also struck down limits on independent expenditures, at least when applied to certain nonprofit corporations,\(^{122}\) and where the limit barred all independent expenditures, regardless of the corporate form of the speaker.\(^{123}\)

Then, in *Austin v. Michigan Chamber of Commerce*, the Court squarely confronted the constitutionality of a prohibition on corporations’ use of treasury funds to engage in independent

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\(^{120}\) *Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 184—85, 198 (1981) (“If appellants’ position---that Congress cannot prohibit individuals and unincorporated associations from making unlimited contributions to multicandidate political committees---is accepted, then both these contribution limitations could be easily evaded.”).

\(^{121}\) *FEC v. Nat’l Right to Work Cmmt.*, 459 U.S. 197, 209–10 (1982) (upholding requirement that corporations keep funds for contributions separate from general treasury funds, stating “[i]n order to prevent both actual and apparent corruption, Congress aimed a part of its regulatory scheme at corporations. The statute reflects a legislative judgment that the special characteristics of the corporate structure require particularly careful regulation”).

\(^{122}\) *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 259 (1986) (creating exception from independent expenditure limit for corporations that are nonprofit, are created for the purpose of engaging in political advocacy, and that accept no corporate donations; arguing “[g]roups such as MCFL . . . do not pose that danger of corruption,” as “MCFL was formed to disseminate political ideas, not amass capital[;] [t]he resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace.”).

\(^{123}\) *FEC v. Nat’l Conservative PAC*, 470 U.S. 480, 490, 492–93, 497–98 (1985) (striking down law barring all independent expenditures by political action committees, including those in corporate form, where candidate accepts public financing, noting case was not a “‘corporations’” case[ ] because [the statute] applies not just to corporations but to any ‘committee, association, or organization (whether or not incorporated)’ that accepts contributions or makes expenditures in connection with electoral campaigns”; stating, “[b]ut for purposes of presenting political views in connection with a nationwide Presidential election, allowing the presentation of views while forbidding the expenditure of more than $1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system.”).
expenditures in support of or opposition to a candidate.\textsuperscript{124} Upholding the prohibition, the Court noted that “[t]he mere fact that the Chamber is a corporation does not remove its speech from the ambit of the First Amendment,”\textsuperscript{125} but then found that the law served a compelling interest in combating “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”\textsuperscript{126} Accordingly, \textit{Austin} carved out an exception for corporations to \textit{Buckley}’s ban on independent expenditure limits.

The Court affirmed this carve out in \textit{McConnell v. FEC}, where the Court, rejecting a facial challenge to numerous provisions of the BiPartisan Campaign Reform Act of 2002 (aka, “McCain-Feingold”), pointed to \textit{Austin}’s stated purpose of prohibiting distortion caused by immense aggregations of wealth in upholding an expansion of independent expenditure limits to include a broader range of ads.\textsuperscript{127} Nevertheless, only four years after \textit{McConnell}, the Court narrowed McCain-Feingold’s reach over corporate independent expenditures by finding that the law could not cover advertising that was not the “functional equivalent” of “speech expressly advocating the election nor defeat of a candidate for federal office.”\textsuperscript{128}

Accordingly, before \textit{Citizens United}, campaign finance law related to corporations and natural persons, loosely sketched, stood as follows. First, the government could limit contributions by corporations and natural persons to candidates. Second, the government could treat coordinated expenses as the equivalent of contributions, and therefore limit those as well. Third, the government could prohibit corporations from making contributions to candidates from their general treasury funds, at least so long as it allowed corporations to make such

\begin{tabular}{ll}
\textsuperscript{124} & 494 U.S. 652, 654 (1990). \\
\textsuperscript{125} & \textit{Id.} at 658. \\
\textsuperscript{126} & \textit{Id.} at 660. \\
\textsuperscript{127} & 540 U.S. 93, 189—90, 208 (2003). \\
\end{tabular}
contributions from segregated accounts from which funds were voluntarily donated by members
of the corporation. Fourth, the government could not limit funds used by natural persons to
engage in independent expenditures for election related communications, regardless of the
content of the communications. Fifth, the government could limit or prohibit corporations’
independent expenditure of general funds to advocate for the election or defeat of candidates, at
least so long as the government allowed the corporation to do so through segregated funds,
unless the corporation was a nonprofit created for the sole purpose of engaging in political
activities and did not itself receive funds from other corporations. Sixth, the government could
not limit corporations’ independent expenditure of general funds to engage in other
communications.

B. Citizens United v. Federal Election Commission

The case of *Citizens United v. Federal Election Commissions* arose when a nonprofit
corporation, Citizens United, sought to air a politically charged film before the 2008 presidential
elections.\(^\text{129}\) The group was funded largely by individual donations, but also received some
donations from for-profit corporations.\(^\text{130}\) The film, entitled *Hillary: The Movie*, attacked then
Senator Hillary Clinton, who was a candidate for the Democratic Party’s 2008 Presidential
primary election.\(^\text{131}\) The film was distributed in some theaters and was available on DVD, but
Citizens United sought greater distribution through the use of video-on-demand.\(^\text{132}\) To promote
demand for the film, Citizens United also created ads, which included “pejorative” statements
about Senator Clinton and promotion of the movie.\(^\text{133}\) Citizens United intended to air these

\(^{129}\) 130 S. Ct. at 886—87.
\(^{130}\) *Id.* at 887.
\(^{131}\) *Id.* at 887.
\(^{132}\) *Id.* at 887.
\(^{133}\) *Id.* at 887.
advertisements on broadcast and cable television.\textsuperscript{134} Citizens United, however, feared that the film and the advertisements could run afoul of then-existing campaign finance laws.\textsuperscript{135}

Citizens United challenged these restrictions as unconstitutional, arguing, in part, that the laws infringed on the group’s free speech rights.\textsuperscript{136} After the dispute was limited to an as-applied challenge,\textsuperscript{137} the district court granted the FEC summary judgment, relying on \textit{McConnell}’s rejection of a facial-challenge to the law.\textsuperscript{138} The Supreme Court noted probable jurisdiction for a direct appeal, and arguments were initially heard on the as-applied challenge that the statute could not be applied to ban independent expenditures by a nonprofit organization funded overwhelmingly by individuals.\textsuperscript{139} The Court, however, asked for reargument on a larger issue: whether laws banning independent expenditures by corporations and unions violates the First Amendment and, consequently, whether \textit{Austin} should be overruled.\textsuperscript{140}

In an opinion written by Justice Kennedy, the Court first found that the case could not be resolved on narrower statutory grounds.\textsuperscript{141} Looking at the movie, the Court found “there is no reasonable interpretation of \textit{Hillary} other than as an appeal to vote against Senator Clinton,” and, thus, the movie was an electioneering communication covered under the campaign finance laws.\textsuperscript{142} The Court also rejected limiting its holding to only video-on-demand communications, an option advanced by the dissent under the theory that such communications cause less

\begin{footnotesize}
\begin{itemize}
\item[134] \textit{Id.} at 887.
\item[135] \textit{Id.} at 888. \textit{See Section \textsuperscript{supra}.}
\item[136] \textit{Id.} at 888.
\item[137] \textit{Id.} at 931 (Stevens, J., dissenting).
\item[139] \textit{Id.} at 932 (Stevens, J., dissenting).
\item[140] \textit{Id.} at 886, 888.
\item[141] \textit{Id.} at 888.
\item[142] \textit{Id.} at 890 (applying test from \textit{WRTL}, 551 U.S. at 469-470).
\end{itemize}
\end{footnotesize}
distortion of the political process than television commercials. The Court further refused to extend the exception for nonprofit advocacy corporations to organizations, like Citizens United, which received only a small portion of its operating funds from for-profit corporations. Lastly, the Court rejected the Government’s argument that Citizens United had waived a facial challenge to the statute, finding the issue had been addressed below, and that that issues involved were sufficiently weighty for the Court to address the constitutionality of the ban on corporate expenditures in toto.

On the merits, the Court first found that the availability of PACs did not alleviate the First Amendment concerns attendant in a ban on corporate expenditures. Then, relying on Buckley, the Court found that the limit on expenditures, “[a]s a ‘restriction on the amount of money a person or group can spend on political communication during a campaign,’ . . . ‘necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached.’” The Court also rejected the Government’s argument that the limit served as a mere time, place, or manner restriction, arguing, “[i]f § 441b applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech.”

Turning then to the primary question of the case, whether different rules could apply to corporate speech because of the nature of the corporation, the Court held that “restrictions

143 Id. at 891 (“We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker.”)
144 Id. at 891—92 (noting that applying a “de minimis” standard would “require case-by-case determinations”).
145 Id. at 892—96.
146 Id. at 897—98 (“PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations.”)
147 Id. 898 (quoting Buckley v. Valeo, 424 U.S. 1, 19 (1976)).
148 Id. at 898.
distinguishing among different speakers” are prohibited by the First Amendment.149 The Court stated:

By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.150

The Court pointed to prior precedents recognizing First Amendment protection for corporations, including for corporate political speech.151 The Court then stated that, “[u]nder the rational of these precedents, political speech does not lose First Amendment protection ‘simply because its source is a corporation.’”152

Having rejected any distinction between corporate speech and the speech of natural persons, the Court turned to the Government’s interest in restricting such speech.153 The Court first rejected the rationale it had accepted in Austin: that corporations, by their nature as non-mortal beings capable of amassing great wealth, posed a serious risk of distorting the political debate.154 The Court noted such a rationale could prohibit a corporation from publishing books,155 would equally apply to media corporations,156 and would disproportionately affect smaller corporations who could not easily achieve access through lobbying.157 The Court also

149 Id. at 898 (citing First Nat’l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978)).
150 Id. at 899.
151 Id. at 899—900.
152 Id. at 900 (quoting Bellotti, at 784; Pac. Gas & Elec. Co, 475 U.S. at 8).
153 Id. at 903.
154 Id. at 904—08.
155 Id. at 904.
156 Id. at 905—06. The Court noted that the statute exempted media corporations, but found that the exemption itself was suspect, as it also distinguished between speakers. Id. Indeed, the Court found that the exemption “is, on its own terms, all but an admission of the invalidity of the antidistortion rationale.” Id. at 906.
157 Id. at 907—08.
flatly rejected the argument that the Government “has an interest ‘in equalizing the relative ability of individuals and groups to influence the outcome of elections.’”

Considering next the possibility of corruption, the Court relied on the distinction, drawn in *Buckley*, between contributions and independent expenditures. The Court, following *Buckley*, found the Government’s interest in preventing bribery could not extend to limiting independent expenditures. Taking a severely limited view of the Government’s interest in preventing corruption, the Court cabined the Government’s interest to preventing “*quid pro quo* corruption.” In a prediction that was perhaps wildly off-mark, the Court stated, “[t]he appearance of influence or access . . . will not cause the electorate to lose faith in our democracy.”

Lastly, the Court rejected the Government’s purported interest in protecting minority shareholders who may not share the view espoused by the corporation, and thus may not appreciate the expenditure of their assets in doing so. The Court reasoned any such rationale would apply to media corporations as well, a possibility the Court found untenable. The Court then chose not to address the constitutionality of restraints on foreign individuals or corporations, noting that the statute did not single these groups out and therefore it would be overbroad even assuming such an interest.

C. A Listener’s Right to Corporate Speech

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158 *Id.* at 904.
159 *Id.* at 901—02.
160 *Id.* at 908.
161 *Id.* at 909.
162 *Id.* at 910.
163 *Id.* at 911.
164 *Id.* at 911.
165 *Id.* at 911. The Court then went on to uphold the law’s disclosure requirements.
As noted above, *Citizens United* was brought by a nonprofit corporation wishing to
distribute its political movie. The case was not brought by a potential viewer of that movie.
Nevertheless, the Court’s reasoning provides no indication that it would reach a different result if
the latter case were presented. Indeed, the Court’s reasoning relies heavily on the effect of
corporate speech on would-be listeners: voters. That rationale reflects strong similarities with
the rationales seen in the Court’s listener rights cases.\(^\text{166}\)

In striking down the limits on corporate expenditures, the Court routinely appealed to the
interest of voters in possessing all information, and of the authority of the voters to identify what
speech was and was not reliable or persuasive. The Court stated, “[t]he Government may not by
these means [of discriminating between speakers] deprive the public of the right and privilege to
determine for itself what speech and speakers are worthy of consideration.”\(^\text{167}\) In contrast to
certain justifiable restraints necessary to preserve government functions, the Court stated “it is
inherent in the nature of the political process that voters must be free to obtain information from
diverse sources in order to determine how to cast their votes.”\(^\text{168}\) The Court also quoted a lengthy
excerpt from a dissent in *United States v. Automobile Workers*, that stated:

> Under our Constitution it is We The People who are sovereign. The people have
> the final say. The legislators are their spokesmen. The people determine through
> their votes the destiny of the nation. It is therefore important—vitally important—
> that all channels of communications be open to them during every election, that
> no point of view be restrained or barred, and that the people have access to the
> views of every group in the community.\(^\text{169}\)

\(^\text{166}\) At least one article has noted the similarity of Court’s analysis to listener rights cases. *See*
1, 25 (2011) (“If the constitutionally protected Freedom to Listen was found paramount with
regard to the admittedly obscene material in *Stanley v. Georgia*, or to broadcasts of the Playboy
Channel in *United States v. Playboy*, then how much more obvious is its application to the Movie
in *Citizens United*?” (footnotes omitted)).
\(^\text{167}\) 130 S. Ct. at 899.
\(^\text{168}\) *Id.* at 899.
\(^\text{169}\) *Id.* at 901 (quoting 352 U.S. 567, 593 (1957) (Douglas, J., Warren, J., and Black, J.,
dissenting)).

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In rejecting *Austin*’s antidistortion rational, the Court again pointed to voters, arguing that “[p]olitical speech is indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.”\(^{170}\) The Court found that, “[b]y suppressing the speech of manifold corporations, both for-profit and non-profit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests.”\(^{171}\) Because of the Government’s actions, the Court reasoned, “the electorate has been deprived of information, knowledge and opinion vital to its function.”\(^{172}\) The Court ended the opinion by pointing to the audience for Citizen’s United movie:

> Some members of the public might consider Hillary to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation’s course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make.\(^{173}\)

Indeed, Justice Stevens, in dissent, noted the listener rights basis for the Court’s holding, stating “the Court places primary emphasis not on the corporation’s right to electioneer, but rather on the listener’s interest in hearing what every possible speaker may have to say.”\(^{174}\) In contrast, the

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\(^{170}\) *Id.* at 904 (quoting *Buckley*, 435 U.S. at 777).

\(^{171}\) *Id.* at 907.

\(^{172}\) *Id.* at 907 (quoting *CIO*, 355 U.S. at 144).

\(^{173}\) *Id.* at 917.

\(^{174}\) See *id.* at 973. He found, however, that the reliance on listener rights weakened the corporation’s claim to First Amendment protection. See *id.* at 947 (“Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also ‘furthest from the core of political expression, since corporations’ First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information.’” (quoting *Beaumont*, 539 U.S. at 161, n.8)).
Court’s reference to the interest of speakers is few, and never squarely in the context of corporate speech.\(^{175}\)

These reasons are highly similar to those relied upon by the Court in the listener rights cases. In *Thornhill*, the Court admonished, “[a]bridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government.”\(^{176}\) *Struthers* noted, “[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.”\(^{177}\) *Virginia Board of Pharmacy* noted the importance of “the free flow of information” in serving the First Amendments’ purpose of “enlighten[ing] public decisionmaking in a democracy”\(^{178}\) In *Pico*, the Court argued that, “just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”\(^{179}\) As these cases illustrate, the grounds for finding a listener’s right in

\(^{175}\) See id. at 899 (“By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice.”). Compare that brief mention with cases that do rely on the interests of speakers. See *Christian Legal Society Chapter of the U. of Cal., Hastings College of Law v. Martinez*, 130 S. Ct. 2971, 2999 (2010) (“By allowing like-minded students to form groups around shared identities, a school creates room for self-expression and personal development.”); *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring) (stating freedom of speech helps “make men free to develop their faculties”); *Cohen v. California*, 403 U.S. 15, 24 (1971) (stating free speech respects individual’s “dignity and choice”).

\(^{176}\) 310 U.S. at 95.

\(^{177}\) 319 U.S. at 146—47.

\(^{178}\) 425 U.S. at 765.

\(^{179}\) 457 U.S. at 868.
the First Amendment are nearly identical to the grounds cited in *Citizens United* for protecting corporate speech.

Beyond *Citizens United*, at least one case appears to have accepted a listener’s challenge to campaign finance restrictions without discussion. In *Federal Election Commission v. Beaumont*, the Court considered a challenge to campaign finance laws prohibiting corporate contributions to nonprofit advocacy organizations.\(^{180}\) The plaintiffs in the case included a nonprofit advocacy corporation, North Carolina Right to Life, Inc. (“NCRL”), and its officers who wanted to use treasury funds to engage in independent expenditures and make contributions directly to political candidates.\(^{181}\) Among the plaintiffs, however, was also Christine Beaumont, a voter unaffiliated with the nonprofit organization.\(^{182}\) In the complaint, the voter alleged that she “has sought out reliable information about federal candidates and their positions” and “would like to receive independent express advocacy communications regarding federal candidates from NCRL.”\(^{183}\) She asserted that “[t]he chill on Plaintiff NCRL’s speech resulting from regulation of independent expenditures in turn results in the unconstitutional infringement of [her] right to receive information and ideas from NCRL.”\(^{184}\)

The Court never discussed the voter’s standing to challenge the law, likely because no party appears to have challenged that standing and because the voter’s asserted interest in receiving NCRL’s communications was not implicated in NCRL’s challenge to contribution

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\(^{180}\) 539 U.S. 146, 149 (2003). The lower court had also struck down the ban on independent expenditures by corporations, foreshadowing *Citizens United*, finding the fact that the nonprofit corporation accepted corporate donations did not distinguish it from the nonprofit corporation at issue in *Massachusetts Citizens for Life*. See *id.* at 150. That decision, however, was not appealed. *Id.* at 151.

\(^{181}\) *Id.* at 150.

\(^{182}\) *Id.* at 149; Complaint at ¶1, *Beaumont v. FEC*, 137 F. Supp. 2d 68 (E.D.N.C. Jan. 1, 2000) (No. 2:00-CV-2-BO-2).


\(^{184}\) *Id.* at ¶53.
limits. Nevertheless, the Court also never questioned the voter’s standing to be included in the case.

Additionally, Justices Rutledge, Black, Douglas, and Murphy, in dissenting in a campaign finance decision for 1948, argued that the First Amendment freedoms “involve the right to hear as well as to speak, and any restriction upon either attenuates both.” Consequently, they would have struck down a statutory ban on unions’ use of treasury fund to engage in political communications.

Accordingly, although Citizens United is a speaker’s rights case, it takes little imagination to see how it would play out if the case were instead brought by a listener. The similarity in the reasoning of the opinion and prior listener rights cases, and the Court’s acceptance of a listener challenge without question in Beaumont, indicates that Citizens United would have been decided in similar fashion had the challenge been brought by a listener, and not a corporation.

D. Speech by Corporate Non-Persons

Given that Citizens United could have been brought by a potential audience member of Hillary: The Movie, a question arises: would the result would have been any different if Citizens United was explicitly denied First Amendment protection itself. As discussed above, the answer to that question is no. Listener rights do not depend on the existence of a constitutionally protected speaker.

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185 See note [174] supra.
186 United States v. CIO, 335 U.S. at 144 (Rutledge, J., Black, J., Douglas, J., & Murphy, J., dissenting).
187 Id. at 155. The majority did not consider the constitutionality of the statute because it interpreted the statute to not apply to a union’s internal communication, such as the one before the Court. Id. at 123—24.
188 See supra Section ____.
It is worth noting that nowhere in *Citizens United* did the Court rely on the supposition that corporations are people. At most, the Court stated that it “has recognized that First Amendment protection extends to corporations.”¹⁸⁹ Nor did any of the cited cases rely on finding that corporations are people under the Constitution.¹⁹⁰

¹⁸⁹ *Citizens United*, 130 S. Ct. at 899—900.
Rather, the Court found that “the Government may not impose restrictions on certain disfavored speakers.”\textsuperscript{191} While this reasoning appears to point to the interest of the speaker in not being discriminated against, the opinion suggests at a different rationale. Just before noting that the Court has upheld First Amendment claims by corporations, the Court recounted the importance of speech to listeners and the effect of such discrimination on listeners.\textsuperscript{192} Only after finding that the speech serves a constitutionally protected interest in serving voters, the audience for the speech, does the Court note that the corporate origin of the speech does not alter its purpose in serving that interest.\textsuperscript{193}

This process of starting with speech, and then moving to speaker, is even more evident in \textit{Bellotti}. There, the Court framed the issue as follows: “[t]he question in this case, simply put, is whether the corporate identity of the speaker deprives this proposed speech of what otherwise would be its clear entitlement to protection.”\textsuperscript{194}

The court below framed the principal question in this case as whether and to what extent corporations have First Amendment rights. We believe that the court posed the wrong question. The Constitution often protects interests broader than those of the party seeking their vindication. The First Amendment, in particular, serves significant societal interests. The proper question therefore is not whether corporations “have” First Amendment rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether

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\textsuperscript{191} \textit{Citizens United}, 130 S. Ct. at 899.

\textsuperscript{192} \textit{See supra} notes [159 & 160].

\textsuperscript{193} \textit{Citizens United}, 130 S. Ct. at 899—900 (“Corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster.” (quotation marks omitted)).

\textsuperscript{194} \textit{Id.} at 778.
Thus *Bellotti* made clear the reasoning implicit in *Citizens United*: to ask whether the speech itself is protected, not whether the source of the speech deserves protection under the First Amendment. So framed, the question does not turn on the nature of the individual bringing the challenge.

The Court has considered the rights of listeners without considering the rights of the speaker at issue, even heavily suggesting that some of the speakers may have had no constitutional right to speak. In *Lamont*, the Court found a constitutional right to receive foreign propaganda, even though the concurring Justices questioned the rights of the hostile foreign-government sources. *Kleindiesnt*, the Court found American professors had the right to challenge, on First Amendment grounds, the denial of a visa to a foreign academic, even though the Court found the academic had no such right himself. Placing corporations squarely outside constitutional personhood would therefore have little to no effect on the Court’s First Amendment analysis.

One may nevertheless argue that listener’s interests can be satisfied without allowing the speech to come from a corporate entity, or without allowing the corporate speech to invade every medium. Indeed, one may argue that a listener, seeking to receive *Hillary: the Movie*, had access

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195 *Belotti*, 435 U.S. at 775—76.
197 408 U.S. at 762, 764.
198 As noted above, see supra Section ____, listener rights are not entirely coextensive with speaker rights where the Government’s interest is in preventing undesired access to speech. In those cases, the Government’s interest in restraining speech largely ceases in the face of a listener challenge. This issue is not present, however, with corporate political expenditures. Moreover, even if it were, a voter-listener would have greater grounds to challenge the statute than the corporation-speaker.
to that film at all times. Citizens United created the film without government interference and was distributing the film in theaters. An interested listener could seek out the movie in that venue and could probably reach out to Citizens United to receive the material directly or, as is common now, over the Internet. Consequently, the campaign-finance laws, which applied only to broadcast media, caused the listener no injury. Such objection would not be well-founded, however, as Virginia Board makes clear. The listener’s right is not limited to receipt of information in only one medium or from a single source. The fact the listener could seek out the information in one medium does not eliminate the listener's standing to challenge a restraint on another. The listener has the right to receive a message in whatever medium is acceptable to both the listener and the speaker, subject to content neutral place, time, and manner restrictions.

Consequently, assuming the People’s Rights Amendment was effective prior to Citizens United, there would be no reason to believe the case would have been decided differently had the challenge been brought by an individual desiring to watch the movie on pay-per-view. Indeed, the text of the opinion likely would be little changed. The question then arises, if independent expenditure limits would fall under the Court’s campaign finance jurisprudence even if corporations were denied First Amendment protection, what, if any, restrictions on campaign finance would stand in the face of a listener challenge?

III. Restraints on Listener Rights to Corporate-Sponsored Speech

As discussed, listener rights would continue to protect corporate generated speech, even if the corporations themselves were deemed to not be persons entitled to First Amendment protection. Nonetheless, that is not to say that listener rights could then serve to undo all attempts to limit campaign financing or even other methods to reverse or dampen the effects of

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199 See supra note 52.
Citizens United. The listener rights cases described above generally allow for restraints on speech familiar in First Amendment jurisprudence. Consequently, a listener rights challenge to common campaign finance regulations, like those considered below, would likely fare no better than speaker challenges already considered by the Court.

A. Disclosure

One common form of campaign finance regulation requires that the funder of campaign-related speech disclose their funding, either through filings with the FEC or by disclosing the sponsor on the face of the communication. The Court has routinely upheld challenges to disclosure requirements of these sorts when brought by speakers. Understandably, the Court has noted that such rules serve the interests of potential listeners—those who care to review the disclosures—and it has identified the only costs as belonging to speakers. Accordingly, disclosure requirements would fare the same in a challenge brought by a listener.

In Buckley, the Court turned back an overbreadth challenge to campaign finance disclosure laws which required political committees spending more than $1000 a year to report all contributions greater than $10, required all candidates to report contributions greater than $100, and required all individuals to report political contributions or expenditures greater than $100 a year.²⁰⁰ Applying “exactig scrutiny” to the requirements because of disclosure’s “unintended but inevitable result” of deterring speech and association,²⁰¹ the Court found the Government’s interest in disclosure was sufficiently strong to withstand challenge.²⁰² In particular, the Court identified three interests served by disclosure. First, “disclosure provides

²⁰⁰ 424 U.S. at 60, 62—64, 81–82. The Court narrowly construed the individual contribution and expenditure provisions. See id. at 80.
²⁰¹ Id. at 64 (citing NAACP v. Alabama, 357 U.S. 449, 463 (1958)).
²⁰² Id. at 66-67.
the electorate with information ‘as to where political campaign money comes from and how it is
spent by the candidate’ in order to aid the voters in evaluating those who seek office.’”

It allows voters to place each candidate in the political spectrum more precisely
than is often possible solely on the basis of party labels and campaign speeches.
The sources of a candidate’s financial support also alert the voter to the interests
to which a candidate is most likely to be responsive and thus facilitate predictions
of future performance in office.

Second, “disclosure requirements deter actual corruption and avoid the appearance of corruption
by exposing large contributions and expenditures to the light of publicity.”

This exposure may discourage those who would use money for improper purposes
either before or after the election. A public armed with information about a
candidate’s most generous supporters is better able to detect any post-election
special favors that may be given in return.

Third, “and not least significant, recordkeeping, reporting, and disclosure requirements are an
essential means of gathering the data necessary to detect violations of the contribution limitations
described [and upheld] above.” Nevertheless, to combat the possibility that reasonable fears of
retribution could chill speech if disclosure were required, the Court fashioned an exception that
would apply to groups that show “a reasonable probability that the compelled disclosure of the
party’s contributors’ names will subject them to threats, harassment, or reprisals from either
Government officials or private parties.” Those groups would have a constitutional right not
to disclose their sponsors.

203 Id. at 67.
204 Id.
205 Id.
206 Id.
207 Id. at 68.
208 Id. at 74. See also Brown v. Socialist Workers, 429 U.S. 89 (1982) (finding socialist party
reasonably feared violence and therefore had First Amendment right to not disclose
contributors).
209 Presumably, so would a candidate, although the Court spoke only of parties and groups.
Similarly, in *McConnell*, the Court upheld an expansion of the disclosure requirements.\textsuperscript{210} An amendment to the disclosure laws required not merely disclosing expenditures for ads directly advocating the election or defeat of a candidate, but also all ads referencing a clearly identified federal candidate.\textsuperscript{211} The amendment also required any person who spends more than $10,000 per year on such ads to file a statement with the FEC, and required any person or group accepting contributions from others to report the names of those contributing more than $1000.\textsuperscript{212} The Court relied on *Buckley* to find that the law satisfied “important state interests . . . [:] providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive restrictions[.]”\textsuperscript{213}

Finally, in *Citizens United*, the Court upheld disclosure requirements that required any electioneering communication funded by anyone other than a candidate to include a line identifying the funder as “responsible for the content of this advertisement,” as well as those provisions considered in *McConnell*.\textsuperscript{214} The Court found the informational interest alone justified the disclosure requirement, stating “[e]ven if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election.”\textsuperscript{215} Indeed, the Court also identified another group of listeners who may be interested in

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{210} 540 U.S. at 196.
\item \textsuperscript{211} *Id.* at 189—90.
\item \textsuperscript{212} *Id.* at 194—95.
\item \textsuperscript{213} *Id.* at 195.
\item \textsuperscript{214} 130 S. Ct. at 913—14.
\item \textsuperscript{215} *Id.* at 915.
\end{itemize}
\end{footnotesize}
knowing about corporate speech: the shareholders of the corporation who might like to know how their money is being spent.\textsuperscript{216}

Provided the strong listener interest seen in the Court’s rulings upholding disclosure, a listener would have a difficult time launching a successful challenge. It would be difficult to argue that a listener would have a constitutional interest in \textit{not} having information—the argument necessary to strike down a disclosure law. Although a listener might argue that laws requiring disclosure could chill speech, which would result in less speech for the listener to hear in the future, such an argument could run into standing problems.\textsuperscript{217} The listener would have to surpass prudential standing bars by alleging more than a generalized grievance, a difficult showing if the missing speech is only hypothetical.

Lastly, the only exception crafted by the Court would not apply to listeners. According to the Court, the First Amendment provides a right to anonymous speech where the group’s contributors reasonably fear retribution.\textsuperscript{218} The hearer of such speech would not share in this fear. Accordingly, disclosure presents even less of a concern to listeners than to speakers, and disclosure requirements would very likely continue to be upheld if challenged by a listener.

\textbf{B. Preventing Corruption}

Throughout the Court’s campaign finance jurisprudence, the avoidance of corruption or the appearance of corruption has been found sufficiently compelling to justify narrowly-tailored restraints. As early as 1948, the Court recognized the purpose played by campaign finance laws

\footnotesize{\textsuperscript{216} Id. at 916 (“Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests.” (quotation marks omitted)).

\textsuperscript{217} See \textit{Lujan v. Defenders of Wildlife}, 504 U.S. 555, 575 (1992) (“[T]o entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.”).}

\textsuperscript{218} See \textit{Buckley}, 424 U.S. at 74.}
in “destroying the influence” of donors over elected officials. \textsuperscript{219} And in \textit{Buckley}, the Court found such purpose sufficient to justify restraints on contributions and coordinated speech:

\begin{quote}
Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. \ldots \textsuperscript{220}
\end{quote}

The Court did not limit the concern for corruption to actual \textit{quid pro quo} deals, however, but also worried that the possibility of such deals could create an “appearance of corruption”:

\begin{quote}
Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. \ldots Congress could legitimately conclude that the avoidance of the appearance of improper influence is also critical if confidence in the system of representative Government is not to be eroded to a disastrous extent. \textsuperscript{221}
\end{quote}

The Court rejected the appellants’ argument that bribery laws were sufficient to meet this need, because “laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action.”\textsuperscript{222}

Since \textit{Buckley}, the Court has taken both an expansive and a narrow view of corruption. In \textit{Austin}, the Court interpreted \textit{Buckley}’s corruption justification to go beyond simple \textit{quid pro quo} deals, allowing “the restriction of the influence of political war chests funneled through the

\textsuperscript{220} 424 U.S. at 26-27.
\textsuperscript{221} \textit{Id.} at 27 (quotations and alterations omitted).
\textsuperscript{222} \textit{Id.} at 27-28.
corporate form.””

Similarly, Justice Marshall, in *California Medical Association v. FEC*, stated that the possibility that “political committees would be able to influence the electoral process to an extent disproportionate to their public support and far greater than the individual or group that finances the committee’s operations would be able to do acting alone” would “corrupt the political process.”

In *FEC v. National Conservative PAC*, the Court defined corruption as “a subversion of the political process” where “[e]lected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns.”

And *McConnell* took that view that, “in speaking of ‘improper influence’ and ‘opportunities for abuse’ in addition to ‘quid pro quo arrangements,’ we have recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors.”

On the other hand, *Citizens United* took a very narrow view of corruption, stating, “[t]he fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt.”

Favoritism and influence are not ... avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness.”

Reliance on a “generic

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223 494 U.S. at 659 (quoting *NCPAC*, 470 U.S. at 500—01).
225 470 U.S. at 497.
226 540 U.S. at 143 (alterations omitted); see also id. at 153 (“Just as troubling to a functioning democracy as classic quid pro quo corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder.”)
227 130 S. Ct. at 910.
favoritism or influence theory ... is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle.\footnote{228}

To emphasize his point, Justice Kennedy flatly stated, “[i]ngratiation and access, in any event, are not corruption.”\footnote{229} The Court took a similar approach in \textit{National Conservative PAC v. FEC}. The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by the PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view. It is of course hypothetically possible here, as in the case of the independent expenditures forbidden in \textit{Buckley}, that candidates may take notice of and reward those responsible for PAC expenditures by giving official favors to the latter in exchange for the supporting messages. . . . On this record, such an exchange of political favors for uncoordinated expenditures remains a hypothetical possibility and nothing more.\footnote{230}

Resolving this debate is beyond the scope of this Essay. Nonetheless, it is worth noting that the analysis before the Court would not depend on whether the challenge was brought by a speaker or a listener. Although eliminating funded speech that results from \textit{quid pro quo} arrangements necessarily limits speech that an innocent listener might otherwise desire to hear, the limitation is only incidental to the government’s actions. As the Court noted in \textit{Kleindienst}, many government actions have the result of interfering with a possible opportunity for speech, but, for that reason, a listener’s argument that any government action that reduces speech is unconstitutional would prove too much.\footnote{231} And the Court has expressed support for restraints on speech that are motivated by interests other than suppressing speech, even in considering an appeal from listeners.\footnote{232} Accordingly, there is little reason to believe that a listener challenge to

\footnote{228 Id. (quoting \textit{McConnell}, 540 U.S. at 297 (Kennedy, J., concurring in part and dissenting in part)). Justice Stevens wrote a vigorous dissent, arguing for the expansive understanding of corruption outlined in prior cases. \textit{See id} at 961—68.}

\footnote{229 Id.}

\footnote{230 470 U.S. at 498.}

\footnote{231 408 U.S. at 768.}

\footnote{232 \textit{See Va. Bd. of Pharm.}, 425 U.S. at 771—773 & n.24.}
campaign finance laws would require a corruption-avoidance analysis different than those undertaken by the Court in speaker cases.

C. Public Financing

Some scholars have proposed a vigorous form of public financing as a solution to resolving the issue of influence through campaign financing.233 Such reforms have had mixed results before the Supreme Court. In Buckley, the Court upheld the presidential public finance system.234 Recently, the Court narrowed the Government’s ability to use public financing, striking down a regulatory system whereby public financing increased to match funds spent by an opposing candidate and independent groups.235 The Court found such matching funds place a substantial restraint on speech, as candidates and groups had to weigh the “penalty” of additional funds for their opposition.236 Presumably, however, other forms of non-matching public funding would withstand constitutional inquiry.

It is difficult to imagine what challenge a listener could mount to a public financing system. While a taxpayer might object to the use of his taxes to pay for public financing, such complaint would come from the perspective of a forced speaker, not a listener. Further, although


234 424 U.S. at 90, 96 (“It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest.”)


236 Id. at 2818. The Court’s reasoning is peculiar, to say the least. Any individual who engages in speech runs the risk of garnering opposition; opposition which may not have arisen had the individual kept mum. This opposition may as likely come from the Government as from a private party. For example, a cigarette company may wish to increase its advertising, or to publicly argue that the risks of smoking are not as great as people believe. Surely, the Government could then use its funds to create or increase a public awareness campaign describing the dangers of smoking. It would be difficult to conclude that the Government’s response would infringe on the cigarette company’s free speech rights.
public financing might result in more campaigns and thus more speech, the Court has never hinted that a listener has a right to silence unwanted speech. The listener would have no more right to silence a publicly financed campaign than to silence a privately financed one. Each form of a campaign merely presents information which the listener may choose to consider, or which he may choose to ignore. Accordingly, a public financing scheme would present no additional problems in the face of a listener challenge.

D. Foreign Speech

_Citizens United_ has raised serious concerns about the possibility of foreign corporations’ engagement in politicking. It was such concern that drew President Obama’s castigation during the State of the Union and which also drew Justice Alito’s mouthing of “not true” in response thereto. _Citizens United_ chose not to address the rights of foreign individuals or corporations, and the Court has summarily affirmed an appeal directly raising the issue. The Court, however, has never explained why the foreign individual or corporation poses a significant threat. If such expenditures present no threat of corruption because elected officials would not feel beholden to the communication’s producers, and as the communications simply produce more information for voters to consider or reject, it is difficult to imagine a principled basis upon which to distinguish such expenditures from those protected by _Citizens United_.

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237 130 S. Ct. at 911 (“We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.”)

Stevens convincingly pointed out, the majority’s reasoning equally applied to foreign bodies as well as domestic. 239

_Citizens United_’s unexplained caveat aside, a listener rights challenge which sought the introduction of foreign political material would likely be successful based on the Court’s current jurisprudence. It is worth remembering that at least two of the Court’s listener rights cases involved foreign speakers. In _Kleindiesnt_, the speaker was a foreign academic, and the challengers were domestic professors. 240 In _Lamont_, the speakers were not only foreign, but hostile foreign governments. 241 In these cases, the Court found that the domestic listener had a First Amendment interest in receiving the foreign speech. Indeed, the country has a long history of considering the views of foreigners, and such views can present informative perspectives that aide United States citizens in the exercise of their vote. And if _Citizens United_ could find no ground to distinguish between the speech of a domestic corporation and a domestic natural person, it is unlikely the Court will find any ground to distinguish between a foreign corporation and the foreigners involved in _Kleindiesnt_ and _Lamont_.

Nevertheless, regardless of one’s right to receive a foreign pamphlet or listen to a foreigner’s speech, one may still find a foreigner’s contribution of money to a candidate, or independent expenditure of money in support of or opposition to a candidate, problematic. The former, however, may still be prohibited, or at least greatly limited, under _Buckley_, and, as discussed above, such contribution limits would stand in the face of a listener challenge. 242

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239 See 130 S. Ct. at 947—48. Presumably, under the Court’s _Citizens United_ reasoning, the government could no more discriminate against a speaker for its foreign identity than it could discriminate against a speaker for its corporate identity. Moreover, even if the Court carved out an exception for such discrimination, foreign entities could simply funnel money through domestic corporations.

240 408 U.S. at 764.

241 381 U.S. at 303.

242 424 U.S. at 26-27.
latter is more troubling, however, and it would be difficult to argue in favor of limiting foreign corporate expenditures in light of *Citizens United*. If a foreigner’s campaign commercial is merely speech, then it is constitutionally indistinguishable from a foreign pamphlet. And if a campaign commercial poses no threat of corruption, of rendering our elected officials beholden to the interests of the commercial’s sponsor, then there is no reason to believe it would garner that loyalty if the sponsor were foreign. Nevertheless, the unease the Court has with foreign campaign funding likely hints at doubt in these premises, and it is only by rejecting one of these premises does foreign campaign funding represent an unprotected activity. Accordingly, addressing the concerns presented by foreign campaign funding may be effectively addressed through either expanding the Court’s understanding of corruption, or by reversing the Court’s understanding that money expended in the creation of speech is as protected as the speech itself. Neither is easy, to put it mildly. Nonetheless, these approaches would solve the problems posed by foreign political expenditures, without painting with a brush so broad as to eliminate American’s access to valuable foreign information and infringing listener’s rights.

E. *Leveling the Playing Field*

Lastly, some scholars have argued that, if the concern in *Citizens United* is the voter, then the government should be given much greater power to prevent distortion of political debate so as to serve the voter’s interests. Consequently, under this theory, a listener would have fewer

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243 *See, e.g.*, Jessica A. Levinson, *We the Corporations?: The Constitutionality of Limitations on Corporate Electoral Speech after Citizens United*, 46 U. San Francisco L. Rev. 307, 399-401 (2011) (“Listeners will not be injured if for-profit corporate electoral speech is limited—a far from it, restrictions promote the rights of listeners and non-spending speakers.”); Larry E. Ribstein, *The First Amendment and Corporate Governance*, 27 Ga. State U. L. Rev. 1019 (2011) (arguing “the rights of listeners are not promoted by [corporate political] speech, which can distort the political marketplace”); *Citizens United and the Ineluctable Question of Corporate Citizenship*, 44 Conn. L. Rev. 575 (2012) (“[I]f it really is the listener’s rights that are at issue, then one should query whether allowing corporations to engage in unlimited independent political expenditures will indeed yield more and different kinds of messages, or whether the
grounds to challenge campaign finance laws that seek to “equalize[e] the relative ability of individuals and groups to influence the outcome of elections” than a speaker. That is because a listener would have a strong interest in hearing all opposing reasonable views and would be ill-served if a small set of nondiverse speakers monopolized the debate, much like the viewer of a televised debate is ill-served if one candidate receives 99% of the time and the remaining candidate is allocated only seconds.

This argument has some intuitive appeal and finds some support in Court precedent, and but the Court adamantly rejected any government interest in leveling the playing field between various viewpoints and, importantly, the Court has not pinned its disdain for this view on the interests of speakers. Rather, the Court has pointed to the interests of listeners in rejecting an equalizing justification. After calling this justification “wholly foreign to the First Amendment,” Buckley pointed to the Amendment’s purpose “to secure the widest possible dissemination of information from diverse and antagonistic sources, and to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the

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Citizens United decision will instead create a hegemony of pro-business speech that overwhims speech with other content.”); see also Flawed Assumptions: A Corporate Law Analysis of Free Speech and Corporate Personhood in Citizens United, 61 Case W. Res. L. Rev. 497 (2010) (analogizing corporate political speech to commercial speech, which, according to the author, receives less protection due to its potential to mislead).

244 Buckley, 424 U.S. at 48.

245 See, e.g., Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 382-83, 389-90 (1969) (upholding FCC’s fairness doctrine in part on ground that it placed those licensed to use broadcast frequencies on more equal footing with those not so licensed and prevented licensed broadcasters from skewing debate).

246 See Buckley, 424 U.S. at 48 (describing concept as “wholly foreign” to First Amendment); Citizens United, 130 S. Ct. at 921 (same); but see Citizens United, 130 S. Ct. at 958 (Stevens, J., dissenting) (arguing “the Constitution does, in fact, permit numerous ‘restrictions on the speech of some in order to prevent a few from drowning out the many’: for example, restrictions on ballot access and on legislators’ floor time.”). To the extent the Court reverses course, or a constitutional amendment provides Government this authority, such action would impact both speakers and listeners.
people." Surely, it is the listener who benefits from such distribution, as the speaker utters only his own view. Consequently, the Court would likely find that a listener could mount their own challenge to any such equalization statute on the ground that such statute would necessarily limit his access to a speaker.

The argument that listener rights would allow for greater government regulation of political debate---by providing not merely an “unfettered interchange,” but also a balanced one---misconstrues listener rights as a general interest in providing listeners with the most informative debate. It may be given that hearing ten different viewpoints is more informative than hearing ten reiterations of the same viewpoint. Nevertheless, the listener right found in the Court’s precedent is not a right of the general public to be exposed to a well-informed and meaningful debate. This is clearly a hoped for result of free speech rights, including listener rights, and a motivation behind the First Amendment. Yet the right does not belong a collective audience that, in seeking to achieve a majority’s understanding of a meaningful debate, limits individual member’s access to some speech in favor of other speech. Rather, the right belongs to the individual listener, allowing him to hear speech that he desires to hear, even if he desires to hear the same speech repeatedly. Such fact is illustrated in Struthers. There, the Court recognized that the community may have an interest in preventing door-to-door leafleting. The majority of households may not wish to receive such material, and would rather receive pamphlets, if at all, at a time of their own choosing. Nevertheless, the Court found that the ordinance was

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247 424 U.S. at 49 (quotations omitted).
248 It would also be a mistake, however, to interpret listener rights as providing a right for a listener to avoid hearing a group that, absent government support, would not be heard. The listener has no right to censor speech.
249 One need not go so far as to assume identical reiterations are likely in campaigns. A speaker, whether corporate or natural, will almost certainly desire to change their argument to reflect new facts, to respond to new objections. Merely because the final point aimed at remains the same does not necessarily mean all arguments in service of that point are mere repetitions.
250 319 U.S. at 144.
unconstitutional because it “substitutes the judgment of the community for the judgment of the individual householder.”

Similarly, here, it may be that the community as a whole desires to hear the view of less well-funded candidates and opinion groups. To do so, the community might decide to quiet well-funded groups, so that the poorer groups may be heard above the din. Nevertheless, the community may not substitute its judgment for the judgment of an individual voter who may wish to hear the attack ad or to watch *Hillary: the Movie.*

Finally, one might argue that the listener’s right is not implicated because laws that seek to level the playing field do not have the effect of eliminating a particular viewpoint, but simply quiet that viewpoint so that others may be seen or heard. In other words, a listener would not be impacted because the listener would still be able to receive the speech, just not at a particular time or in a particular form.

Nonetheless, the Court has expressly rejected the argument that the availability of speech in another form or from another source eliminates the listener’s claim. In *Struthers*, the Court acknowledged that a resident could seek out the content in the leaflet from another source, but held that “[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.”

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251 *Id.* at 144.

252 Justice Stevens makes a point similar to this in his dissent: “If the overriding concern depends on the interests of the audience, surely the public’s perception of the value of corporate speech should be given important weight.” 130 S. Ct. at 973. Nevertheless, regardless of the “public’s perception” of the speech, an individual member of the public retains the right to disagree and seek out the speech.

253 *Cf. Beaumont*, 539 U.S. at 161 n.8 (“A ban on direct corporate contributions leaves individual members of corporations free to make their own contributions, and deprives the public of little or no material information.”).

254 319 U.S. at 146—47.
Additionally, in *Virginia Board of Pharmacy*, the majority expressly rejected the dissents’ argument that, because the consumers could obtain the price information they sought by simply contacting the pharmacists and inquiring, they had no valid claim:

The dissent contends that there is no such right to receive the information that another seeks to disseminate, at least not when the person objecting could obtain the information in another way, and could himself disseminate it. Our prior decisions, cited above, are said to have been limited to situations in which the information sought to be received would not be otherwise reasonably available; emphasis is also placed on the appellees’ great need for the information, which need, assertedly, should cause them to take advantage of the alternative of digging it up themselves. We are aware of no general principle that freedom of speech may be abridged when the speaker’s listeners could come by his message by some other means, such as seeking him out and asking him what it is. Nor have we recognized any such limitation on the independent right of the listener to receive the information sought to be communicated. Certainly, the recipients of the political publications in *Lamont* could have gone abroad and thereafter disseminated them themselves. Those in *Kleindienst* who organized the lecture tour by a foreign Marxist could have done the same. And the addressees of the inmate correspondence in *Procunier* could have visited the prison themselves. As for the recipients’ great need for the information sought to be disseminated, if it distinguishes our prior cases at all, it makes the appellees’ First Amendment claim a stronger rather than a weaker one.\(^{255}\)

Consequently, while the banal attacks leveled in *Hillary: the Movie* were most likely parroted through bloggers and others media sources, thus providing listeners with ample sources to hear it, this may not be true for all corporate political speech, and, even if it were, the listener would have a right to demand to hear Citizens United’s version of it.

Lastly, it is worth pointing out a result of this analysis that creates what might appear to be a contradiction at first. As discussed above, putting aside reasonable time, place, and manner restrictions, the government may not limit a listener’s access to speech. The mere fact that a listener may actively seek out the speech does not diminish the merits of the listener’s challenge to the denial of access to the speech through some other medium. Yet, advocates for campaign finance limits may argue that the restraints are necessary or listeners will be prevented from

\(^{255}\) 425 U.S. at 756 n.14.
hearing certain viewpoints unless they actively go out and try to find them. For example, an active voter may go out and look for the viewpoints of a minority party, but they will likely be denied access to those viewpoints through broadcast or major media channels because that party will not have the financial wherewithal to compete with well-funded opponents in obtaining access to these limited channels. Consequently, one may argue, we are left with a dilemma: some voter will be denied access to some speech they might desire to hear, the question is merely to which voter the law should cater.

Nevertheless, this objection ignores two points. First, for purposes of corporations, the objection is an imperfect fit. There are many small poorly funded corporations who may not even be able to afford basic commercial advertising, never mind campaign advertising. And there are many wealthy individuals who are quite capable of taking over vast amounts of media to advocate their view. Thus, even if the objection was persuasive, it would count in favor of limiting all excessive speech, not simply that of corporations.

Second, the objection ignores the fact that the First Amendment binds only state action. In the first scenario, the voter’s access to speech is limited only as a result of government action. In the second, the voter’s access is limited due to market forces. While this limitation may not be desirable, it is permissible within the First Amendment. The former is not, regardless of whether the speech originated with a corporation.

IV. Conclusion

Controlling the financing of campaigns for elected office continues to garner fevered support. Understandably, voters want elected officials to serve their interests and not provide special treatment to those individuals, groups, or corporations that may lay claim to financially

helping the candidate obtain office. Equally understandable, voters may mistrust political speech by corporations: bodies which are not citizens, do not vote, are amorphous in form and capable of chameleon-like changes in the face of public scrutiny, may serve to shield disreputable speakers from public identification, have no loyalty to the United States or conscience to speak of, are immortal and immune from the non-economic effects of legislation, and which may amass vast sums of wealth ready to be deployed in nefarious ways. Accordingly, the desire to definitively state that corporations are not the moral or constitutional equivalents of natural persons, and that elected officials should not cater to their interests at the expense of natural persons, is plain.

Nevertheless, attempts to eliminate legal personhood for corporations will not have the effect of reversing *Citizens United* or of altering the Court’s analysis of corporate political speech. Regardless of how one conceives of the corporate form, and the legal rights one attaches to it, any form of speech generated by such a body is constitutionally protected because a listener has the right to hear it. Monkeys and corporations may generate information which may profoundly affect a listener, and the First Amendment guarantees our right to hear such speech.