

Supreme Court Suggests Possibility for Expanded Protection of Corporate Speech by Setting *Citizens United* for Reargument

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In an unusual move, the Supreme Court did not issue an opinion in *Citizens United v. FEC* before leaving for its traditional summer recess. Instead, the Court ordered additional briefing and argument on whether two important prior cases allowing restrictions on corporate political speech should be overturned.

The *Citizens United* case asked whether a particular anti-Hillary Clinton documentary, offered through a video-on-demand service, could be regulated as campaign advocacy. Although *Citizens United*, the sponsor of the video, had strong arguments that the issue could be decided on narrow grounds (e.g., that video-on-demand services are not subject to the campaign finance laws), the order suggests that the Justices may use this case as a vehicle for a broader ruling protecting corporate free speech rights. Wiley Rein filed an *amicus* brief in the first round on behalf of the U.S. Chamber of Commerce, asking the Justices to reconsider its past precedent.

The Court ordered additional briefing on two specific cases, *Austin v. Michigan Chamber of Commerce* and *McConnell v. FEC* (in part). In *Austin*, the Supreme Court upheld a state statute prohibiting corporate independent expenditures by a 6-3 vote. In *McConnell v. FEC*, 540 U.S. 93 (2003), the Court upheld the facial validity of § 203 of the Bipartisan Campaign Reform Act of 2002, which prohibits corporations from funding electioneering communications (*i.e.*, certain communications that refer to a federal candidate and are broadcast within 30 or 60 days of an election). That provision was successfully challenged on an as-applied basis in *FEC v. Wisconsin Right to Life*.

Authors

Andrew G. Woodson
Partner
202.719.4638
awoodson@wiley.law

Oral argument is scheduled for 10 A.M. on Wednesday, September 9. *Amicus* briefs are due Friday, July 31.