Corporate Speech

Corporations and the First Amendment  
Corporate contributions to elections  
Lobbying  
Securities and Exchange Commission

Corporate Speech: Why

- Why do we care about corporate speech?
  - Public relations/advertising
  - Journalists
  - Citizens
  - Students

Corporate Speech: Corporations

- Corporations are "entities" recognized by the government
- Rights and responsibilities
- Non-media Corporations have First Amendment rights
  - Individuals have more rights
  - Media companies have more rights
- Based in part on First Amendment idea of a right to receive information
Corporate Speech: Rights
- Corporations have some First Amendment rights as a “speaker”
- Can contribute political and social commentary
- Provide commercial information to consumers
- Cannot be compelled to carry messages that they oppose
- Allowed to lobby the government

Corporate Speech: Limits on rights
- Corporations have no right of privacy
- Can be required to testify against themselves
- Can be compelled to provide information to the government and the public
- Corporations cannot contribute money directly from their treasury funds to support or oppose a candidate
  - Can create political action committees

Corporate Speech: Public Issues
- Supreme Court says corporations have a right to speak on matters of public importance
  - Referenda
  - Mass. law prohibited corporations from buying ads that supported or opposed a referendum unless the corporation was directly affected
  - Bank wanted to fight an personal income tax proposal by purchasing ads
  - Attorney general says tax not directly related to banks business.
Corporate Speech: Bellotti

- Supreme Court declares Massachusetts law unconstitutional
- Court examines the nature of the speech
  - Political speech – “at the heart of the First Amendment’s protection”
- Court says citizens have a right to receive information
  - “The fact that advocacy may persuade the public is hardly a reason to suppress it.”
- Did NOT rule that all corporate speech is protected

Corporate Speech: Compelled Speech

  - Public utilities commission required PG&E from including messages in its billing envelopes from a consumer group that often opposed PG&E
  - Supreme Court says requirement was unconstitutional
  - Corporations cannot be required to carry messages they disagree with
    - Miami Herald v. Tornillo

Corporate Speech: Campaigns

- Federal Election Campaign Act of 1971
  - Prevents corporations and unions from making contributions and expenditures from their treasury funds on behalf of political candidates
  - Contributions: Gifts of money or services given directly to candidate or campaign committee
  - Expenditures: Money spent independently of candidates to advocate their positions
  - Why should corporations be limited from making campaign contributions?
Corporate Speech: Campaigns

- **Austin v. Michigan Chamber of Commerce**
  - (1990)
  - Law prohibited corporations from making campaign contributions
  - Supreme Court upheld the law
    - Corporations not barred from forming political action committees
    - Employees can contribute because it reflects employees’ opinions not the corporations

Corporate Speech: Campaigns

- Corporations can contribute soft money directly from their treasuries
- Soft money: Money given to political parties for “party-building” activities
  - Pins
  - Bumper stickers
  - Get out the vote drives
- Political parties can buy advertising supporting a candidate as long as it doesn’t coordinate the campaign with the candidate

Corporate Speech: Campaigns

- PACs – Political Action Committees – raise and spend campaign money separately from the corporate treasury
- PACs are limited in the contributions they can make to political campaigns
- PACs can make unlimited expenditures on behalf of the candidate
  - Buckley v. Valeo
Corporate Speech: Lobbying

- Lobbying is part of the First Amendment right "to petition the Government for a redress of grievances."
- Direct contact with lawmakers/policymakers
- Indirect contact (grassroots campaigns)
- Lobbying Disclosure Act of 1995
  - Requires lobbyists to register and report general activities
- Foreign Agents Registration Act (FARA)

Corporate Speech: Securities

- Corporations can be required to speak/publish
- Securities acts require publicly traded to disclose information to
  - Government
  - Shareholders
  - Public
- SEC – Securities and Exchange Commission – regulates

Corporate Speech: Securities

- Rule 10b-5 of the Securities Exchange Act of 1934
- Illegal for a corporation (or its agents) to be manipulative or deceptive in connection with the sale of securities
- No false or misleading statements
- PR firms are liable for fraud if they pass on misleading investment information
  - "Reasonable investigation"
  - Responsible for withholding corporate information it knows is false
Rule 10b-5 prevents insider trading.

Insider: Someone who because of their position has access to nonpublic corporate information.

Insider trading: buying or selling securities based on this nonpublic corporate information. Insiders who trade securities must disclose material information before trading.

Insiders:
- Corporate officers
- Directors
- Controlling stockholders
- Corporate public relations officers
- Investment advisers
- Public relations consultants
- Financial journalists and market insiders

Tipping: Passing nonpublic material onto friends or brokers so they can trade.

Tipper: Person who passes on the nonpublic material to a friend, broker etc.

Tippee: Person who receives an insider tip and makes a securities trade based on the information.
Corporate Speech: Securities
- SEC v. Texas Gulf Sulphur Co.
- Insider trading and misleading statement
- Company issues press release to dampen rumors about "large" copper deposit in Oregon
  - Estimates of ore "without factual basis…"
- Investors sold shares.
  - However, Texas Gulf Sulphur had made a 10-million-ton strike. Announced 12 days later.
- Insiders bought stock and tipped friends

Martha Stewart investigated as tippee
- Prosecutors are trying to determine whether Stewart got an illegal insider trading tip in December 2001 when she dumped 4,000 shares of ImClone Systems stock a day before the FDA decided to reject the company’s application for its proposed cancer drug, Erbitux. That decision sent ImClone stock plunging.

Corporate Speech: Securities
- Enron
- Hid corporate debt/problems
- Executives sell stocks
- Employees, investors aren’t told of most sales until much later because of loophole
- SEC to close loophole
- [http://www.chron.com/content/news/photos/01/12/08/graphics/popup_stocks.html](http://www.chron.com/content/news/photos/01/12/08/graphics/popup_stocks.html)