Alida Kass ([00:00:01](https://www.rev.com/transcript-editor/shared/YUXsMWNsBt3mNh_2vMRrUAyKsBJ7lvpTVFV3H4sekgIig-of1zJys1-KHSHhAqUec_2La-arYu0JWIU9WUVyVSdYIBM?loadFrom=DocumentDeeplink&ts=1.05)):

Get the doors, please.

([00:00:16](https://www.rev.com/transcript-editor/shared/aFlqShHNkwzh18T-paTiNjOV-UJijvTwvzGYTEGlTWuysp3-GkoKCVsrur3NWOubO2IfDcPtQDce_VonZoUg_KtRROI?loadFrom=DocumentDeeplink&ts=16.74)):

Okay. Welcome back. I'm Alida Kass, Vice President for Strategic Initiatives at the Federalist Society and Director of the Freedom of Thought Project. Our next panel will now focus on theories of corporate rights and how those have developed to include the sort of expressive constitutional interests of today. And as indicated by the title, we'll touch on the question of how we should understand Citizens United, perhaps in part in light of the conversation that we just had on our prior panel. Directing this conversation, we have Judge Greg Katsas. Judge Katsas is a double Thomas clerk. He serves on the DC Circuit Court of Appeals. His extensive and very impressive bio is on the Federalist Society website. He has held many senior positions in the Department of Justice, including head of the Civil Division, argued several arguments that the US Supreme Court, and is a great friend of the Freedom of Thought Project. Judge Katsas, floor is yours.

Hon. Gregory G. Katsas ([00:01:22](https://www.rev.com/transcript-editor/shared/NvS2z09JnpAeoCdJdVrYeaR4Vh_GzbKGldHM_UU5Fw24AovIR0lGDIDsAQ3dpq0c9fsAA8dkIY73zzW-KQkQ_U94w-8?loadFrom=DocumentDeeplink&ts=82.23)):

Thank you. Citizens United: it's a case that provokes some pretty strong passions. It's not just every Supreme Court decision that's produced kerfuffles between a president and a sitting justice at a State of the Union address. What is the challenge? The title of the panel is Challenge of Citizens United. So what is Citizens United about? Well, to many it's a case about campaign finance. The specific holding strikes down some expenditure limits in the Bipartisan Campaign Reform Act. There's a doctrinal debate about campaign finance cases like Buckley versus Valeo and McConnell versus FEC. And when the court comes to apply strict scrutiny, there's a policy debate about what kind of corruption constitutes a compelling government interest. Is it just quid pro quo or is it something broader like undue influence? There's also a more general aspect to Citizens United linking to the first panel that we've heard from and the overall themes of the day, which is, to what extent do corporations have constitutional rights and how should judges or academics or lawyers do the legal analysis when it is a corporation invoking some specific protection of the Bill of Rights?

([00:02:59](https://www.rev.com/transcript-editor/shared/EeoMru7ES6Hwm5KzwMNRs5Q30JYEMOX2h4KarJZmzJEqhLf2VxmoZXAKsLcsL70b_0cBd7Jj4dAwL5TXH2HGQB3Heyc?loadFrom=DocumentDeeplink&ts=179.8)):

So one can imagine some pretty categorical all or nothing positions. On one extreme you might say that a corporate person has the same rights as flesh and blood humans. Think, Mitt Romney--corporations are people too--just treat the legal person as if it were a natural person, and that has some difficulties. It might be implausible to think of a corporation as just like real humans and it might not reflect how the framers thought about corporations. Alright, but then on the other extreme of the spectrum, you might say, take, I'm not sure if this was Ryan Newman's positions, but you might say corporations just have no constitutional rights. They're creatures of state law. They have extraordinary legal privileges like eternal life and limited liability. And so a state's power to create corporations should imply a power to define their purposes and powers and also rights.

([00:04:06](https://www.rev.com/transcript-editor/shared/QmjtQYDepg0vRNwvMaJKYPYINPOf0xGhVFa3j_77YSfzlBHv6UczYlR-sUy5kFyZNhPU6CwJfzfF3XMAS2f-tLDKyOI?loadFrom=DocumentDeeplink&ts=246.19)):

Problems with that--you can imagine all sorts of really tough hypotheticals about content-based or even viewpoint-based requirements or restrictions on corporations. Also, if corporations, if no corporation has any constitutional right, probably Hobby Lobby was wrongly decided and that is a result that might not be appealing to many in this room. So what are some possible intermediate positions one might take? Let me just put three on the table. Do we want to distinguish among types of rights, should we think of due process differently from free exercise? Due process is about fair adjudications, it doesn't really matter if the defendant is a real person or a corporate entity versus free exercise. Does it matter--that's bound up in beliefs and thoughts and conscience. Corporations don't have conscience. Do we want to make a distinction like that? Do we want to distinguish among types of speech? There's a whole body of First Amendment law about commercial speech and views on that run the gamut from Justice Thomas who would afford it full protection to current doctrine which affords it limited protection to Chief Justice Rehnquist who wanted to afford it no protection.

([00:05:37](https://www.rev.com/transcript-editor/shared/Ch3q_E7ZQl8QAfha9UhaZ4uFuAfhpFKXvvsMtQYsTadICPv7VtpvIucmPi-7z7V0d6ygfUHVLUa9PuKM3HQvG6BqWww?loadFrom=DocumentDeeplink&ts=337.48)):

What about political speech? Should we distinguish between Delta Airlines speaking on political matters related to airline safety, which is core function of their business, versus Delta Airlines speaking about voter ID requirements, which would seem much more attenuated. Should we distinguish among types of corporations? And there's been a lot of thought in the cases and the current fights on this issue. Is there a distinction between media, corporations and other corporations? That question figured very prominently in Citizens United itself. Should we distinguish between for-profits and not for-profits, which was an issue at the fore of Hobby Lobby. Should we distinguish between small and large corporations, which was a line that Texas drew in NetChoice, in figuring out which one should be treated more like persons. Or, should we distinguish between publicly traded and privately held with the predicate for bearing rights is a link between the human owners and legal control over the state-created entity.

([00:06:52](https://www.rev.com/transcript-editor/shared/KoNJ8oEhiy_zIh4xUBQdXtvOBXGIJQ2cSvJf9nOzDaoD_r-CnPbbu2YV93ahooVhNq6qVo2MFkhG-clg7NmEDAr-N-k?loadFrom=DocumentDeeplink&ts=412.64)):

We've got a great panel to discuss these issues. I'll introduce them briefly. Robert Miller is the F Arnold Daum chair in corporate finance and law at the University of Iowa College of Law. He co-directs the program on organizations, business, and markets at NYU Law School. He holds research positions at the Law and Economics Center at Scalia Law School and the James Wilson Institute and he's an expert on corporate and securities law, and law and economics.

([00:07:26](https://www.rev.com/transcript-editor/shared/2IVqSt5nWcJLF2bGJzxlJlLq9_goQVXmStlz55SB4KcDLOi2KFx2ftFXrM9XD_INdIatvM2PePQLZfxAPPRxMhORERQ?loadFrom=DocumentDeeplink&ts=446.99)):

Matt Stoller is the Director of Research at the American Economic Liberties Project. He writes about monopolies. He's the author of Goliath, the Hundred Year War between Monopoly Power and Democracy, and he publishes an email newsletter called Big. He's lectured on competition policy and as a house staffer, he worked on Dodd-Frank.

([00:07:52](https://www.rev.com/transcript-editor/shared/82RjIyHm4dP_nE3DmSYeCCPAp_vzlYUZ325t0avHyxO8zpPVwdM2bzhVw_G74b6dxfLCzIV3HrXen-tsvTXkR5w7crw?loadFrom=DocumentDeeplink&ts=472.64)):

John Ehrett is chief counsel to Senator Josh Hawley and was a lead Republican Counsel on the Senate Judiciary Committee Subcommittee on privacy, technology, and the law. He was previously an associate at Gibson Dunn, a law clerk to Judge Ho on the Fifth Circuit and Judge Kozinski on the Ninth, and he's a graduate of Yale Law School.

([00:08:16](https://www.rev.com/transcript-editor/shared/vtDnzS5eZ1Vo3vL9fJbqlpa_bGmqeJ8hh8AL0uWvLinbGwxd6DLQLeRF4YwWMgXzJAgYsjBy88PS2-kjlNIh-7F3454?loadFrom=DocumentDeeplink&ts=496.94)):

And, Eric Wessan is the Solicitor General of Iowa. He's that's state's lead appellate lawyer, including in the United States and Iowa supreme courts. Graduate of University of Chicago Law School, and he too clerked for Judge Ho, and also for Judge John Kness on the Northern District of Illinois.

([00:08:39](https://www.rev.com/transcript-editor/shared/8ZdnrCd5xzWOP-VlucH0PW7RMXtAFdoypxk59Ou595MdZXqnYQmdv6E6k4h8aLHHxYW-31nXSovb5NeE23_qO8RcG8E?loadFrom=DocumentDeeplink&ts=519.47)):

So we're going to get started with Professor Miller. He is an expert on corporate law doctrines. If we want to drill down on what rights corporations--what constitutional rights corporations should have, we might want to have a more precise understanding of how they emerge out of state law. So Professor Miller.

Prof. Robert Miller ([00:09:03](https://www.rev.com/transcript-editor/shared/1sSqYspQ7iS8MKYgebmDZiZzmYGZIcoMjZOyLd3XjodqMq6UqnEFZFzL8NFWSys4e_6b8n4IIAoijTTpskjT6nNfoj4?loadFrom=DocumentDeeplink&ts=543.66)):

Thanks very much. So my remarks here follow pretty closely on some of the things that were said on the last panel. As you heard there--or if you were here to hear it, if not, you're going to get a very brief recap of it--when corporations first existed, they were created by individual acts of the sovereign and therefore, to get a corporation you had to be able to go into the sovereign and get him to do what you wanted him to do. They were there for the province of rich and connected people and they almost always were created with some type of monopoly rights or special economic rights. And as far as I'm concerned, that's really bad. But fortunately that's not how corporations evolved. By the middle of the 19th century and sort of by the end of the 19th century, every state had an enabling statute which allowed anybody to go in and form a corporation by making an appropriate filing and paying a very nominal fee.

([00:10:04](https://www.rev.com/transcript-editor/shared/5raFWJGRE1iu5pOwhZNY992rUn5qhZjpwJ1JNSyrl2AhRYPlq6hxQ8IaiqyuwQZvU_AqxAnGBXXDqaRvmIKEOODtvBs?loadFrom=DocumentDeeplink&ts=604.02)):

And those corporations did not come with any special economic rights. They did come with limited liability and perpetual existence. And I want to focus on those because I want to suggest to you that the old view where, corporations were the province of the rich and connected and had special economic rights, what I'm going to call the privilege view of the corporation, should really in your mind be completely superseded by what I'm going to call the contract view of the corporation. What today do you get out of a corporation that you couldn't get from a bunch of private contracts? And I'm going to suggest the answer to that is almost nothing. A corporation really is just a set of contracts among ruling participants.

([00:10:52](https://www.rev.com/transcript-editor/shared/B7q_ocvuk96I9e5QT4vThlXH1p9ucdld_oN5CDwW10NMx91y_gZea_A8ZlzeTrBryeHMdbPfzB7Q3cVDUPrdYHfmCgg?loadFrom=DocumentDeeplink&ts=652.29)):

Now how's that the case? Well, if you look at the enabling statutes we have in Delaware, our leading corporate law jurisdiction, besides the Delaware General Corporation law, we have the Delaware Limited Liability Company Act. And the Limited Liability Company Act is a very beautiful thing because this is what it says--each provision of the LLC Act says the company shall be thus, unless the members agree otherwise. You can literally agree to any internal arrangements you want under the Limited Liability Company Act, and you get an entity that for all other purposes, acts a lot like a corporation. Even inside the DGCL, there are a few mandatory rules and there's some good reasons for having them. But inside the corporation, the internal relations among the officers, the directors, the shareholders, creditors, suppliers, anybody who enters into a contract with the corporation is contractual. Now you might say, well what about perpetual existence? No. Contracts can on as long as people want them to go on. Contracts don't have a natural termination date. You can get perpetual existence out of a contractual arrangement. What about issuing shares? Don't you need a statute to do that? No. Corporations issue bonds, which are a securities with a different set of rights, but you could certainly by contract issue equity like securities. That's precisely what we do under the Limited Liability Company Act.

([00:12:20](https://www.rev.com/transcript-editor/shared/LvnePpG6k6Yim2FCZjFXsz55DtuoQcZrsVLKQEfH6e-uQtYU6K-JwhwsyRaNU2NxQprx0sadSau0iQBMsALujbj6Xlc?loadFrom=DocumentDeeplink&ts=740.08)):

The only thing, really, that you need the state to do is to create limited liability for involuntary creditors of the corporation. The corporation could always negotiate for limited liability against its voluntary creditors. It's only the involuntary ones with whom it can't negotiate because it doesn't know who they are, basically tort plaintiffs, it's only those creditors that require the state action to create the type of entity we think of as a corporation or a limited liability company with limited liability. Now, what I would suggest to you is that even that would be what we would have in a world where people could negotiate forward, a coasian world of zero transactions costs. And why is that? Well, the first thing to see is that the world of unlimited liability, where partners have unlimited liability for all the acts of the company, is nothing natural or descended from heaven as if it had to be that way. At Roman law, what we think of as a partnership was called a societas.

([00:13:35](https://www.rev.com/transcript-editor/shared/bTxjPMGU4n4kGzqvr93MbVLCXAhqKKNxisErkyuJcboKnejLlLs3hsSl5laF5C-7csgcOofWQ2jN2kQ1dMMrn4s_rQ8?loadFrom=DocumentDeeplink&ts=815.29)):

And then a societas--if you dealt with a member of the societas, what we would think of as a partner, the societas was liable to you. That individual partner was liable to you, but the other partners were not, right? So the rule in Roman law was sort of the opposite of the common law rule. The policy choice you face with limited liability is this: in a world with limited liability, if you end up as an involuntary creditor of a corporation and the corporation happens to be bankrupt and it doesn't have adequate insurance to cover your judgment, then you have a chance of recovering from the individual partners, the individual investors. In a world of unlimited liability. With a world of limited liability, you don't get that. On the other hand, you do get other things. You get a world where people are willing to invest in very large business ventures, where you can raise capital from very large numbers of people, which is necessary to fund things like railroads and big pharma and microchip companies and cell phone companies and airlines and so on, and anything that's a huge, big capital intensive business.

([00:14:53](https://www.rev.com/transcript-editor/shared/Owb6QvTmdXnx7QETKbTwgPVDBpw0Vfuy4oEggr2y0IAZxMVezEXgivp9w3NJhStqKftSFKDKVB-93WhIanx6u0wbFd0?loadFrom=DocumentDeeplink&ts=893.72)):

So you can live in two worlds. World number one, a world of unlimited liability, and if you end up as an involuntary creditor, your chances of recovering are a little bigger. Or world number two, a world where you can be a customer, an employee, and investor of these types of large businesses which provide us with our standard of living that we have in modern economies. Those are your choices. Most people I think would go for the latter, the world of limited liability and modern economy. Proof of the fact: if we wanted to change our rule, we easily could by amending the state corporation statutes to eliminate the possibility of creating entities with limited liability. We don't do that. Okay, so if this contract review with the corporation is correct, so that all you really have is a very complicated web of contracts among a very large number of people, this should give you a pretty strong view of the rights of corporations because the rights of corporations are merely the rights of the individuals behind it. A corporation, can a corporation suffer racial discrimination? You might think how could, it has no race? But imagine the government said we're going to let contracts to corporations but not to ones who have shareholders of a particular race. Well, that would clearly be racial discrimination. If the government said we're going to let contracts, but not to corporations owned by Catholics or Jews or Muslims. Well, that would be religious discrimination. If you take a corporation's property in a takings, the shareholders are poorer for it. There's no way of violating the quote rights of a corporation without violating the underlying rights of the people behind it.

([00:16:45](https://www.rev.com/transcript-editor/shared/Z60MxBE7ujm2wifijyPcEUcma87tb-ZwdDxG1qKRAjUlPuAU7LFa4t4mrM4bA5RshQmTWAhOGqcb6QOIK1sYXsvXJDI?loadFrom=DocumentDeeplink&ts=1005.41)):

I'll just say one more thing about one of the earlier presentations: what would happen if you started doing things like having Florida say to Delaware corporations, you can't lobby us unless you get a shareholder's vote to permit it. You know what would happen? I'll tell you exactly what would happen: every year when a corporations directors stand for reelection and they reappoint their auditor, they would have one more boilerplate shareholder resolution. The corporation can lobby any government in the United States and it wants or maybe even any foreign one too. And you know what would happen? The shareholders would vote in favor of it every year. It would do nothing. Sitting in the audience listening to the past panel, you know what makes me nervous? Not big businesses. Big businesses are more fragile than you think. Go look at the largest corporations in America in 1970. When's the last time you bought something at Sears Roebuck?

([00:17:47](https://www.rev.com/transcript-editor/shared/iYb4kUyfgn9QiMFbN88eAPlpaNrYIHMbn_2TW5QHcEm5qZK-ot2zSAk24dDuwbq0NB0gSa5HnJ3jhTluP5mPu1PY0vo?loadFrom=DocumentDeeplink&ts=1067.99)):

General Motors was on that list. GE, which is going to be lucky to avoid bankruptcy. The biggest corporations in America today, they weren't there and they wouldn't exist for decades later. Corporations do not last very long. They come and they go, they are not as rich as you think. What's the profit margin of the average public company in America? Less than 7%. You know what makes me worried? Government. A government official who comes here and says, we don't want people criticizing us. We don't want people lobbying us. The government are always the people with all the guns. The government are the people who have unlimited ability to litigate with taxpayer dollars. They're the people you should worry about, not so much the corporations. That's what I have to tell you.

Hon. Gregory G. Katsas ([00:18:42](https://www.rev.com/transcript-editor/shared/qh8uAfSGXe7h9GgST4BRS07eocWTBS2H64KIBvtbtJyHIT3GPxwYtMtSzBL8MBLzQwxpLZF-ccFp6tiuNhpz2QrIheg?loadFrom=DocumentDeeplink&ts=1122.36)):

Corporations at least accumulate some degree of wealth and influence and concerns about leveraging that are in the heartland of antitrust. And antitrust is in the wheelhouse of Matt Stoller. Matt.

Matt Stoller ([00:19:02](https://www.rev.com/transcript-editor/shared/oN330aTfjLtUP-ZGXeKWNSyNCMlQF1K2-L9tBD_wANu2jI45KGD7PwBHwLb5iF97QZ_8Hx4MV-lqmRTOGh6-oVkFDnw?loadFrom=DocumentDeeplink&ts=1142.04)):

Thank you so much. It's always a pleasure to talk and learn from people here. I really enjoyed the last panel and the discussion of the associationalist origins of incorporation law and the religious origins of it. And I also appreciate Caleb's comment about disestablishment. You only get that at a FedSoc event and I really appreciate that. So I kind of want to offer a challenge, because I look at Citizens United and I see it as part of a nest of decisions by the courts that sort of set our expectations with the legitimate locus of governance from public institutions, public governments to private governments, because I think one way to look at corporations historically has been as, especially when they get large today, as private sovereign institutions.

([00:20:06](https://www.rev.com/transcript-editor/shared/pE6Zm00QELUqjBd54LPAzFbULIVDXq5mY_4zp3A5FWS-tsab5vvX9lsXSgIVrvmSUuBfLHGs10GFnRhT22D2jGheSps?loadFrom=DocumentDeeplink&ts=1206.15)):

And that challenge, I'm going to make it very practical, what do we do about Boeing? And the reason I ask this is there was a hearing a few days ago in the Senate and lots of senators were very mad about Boeing and what's happened, and I don't know if you guys do this, but I now when I book a plane flight, I look to see what kind of plane it's going to--I want an older plane and we're all kind of terrified of that. And the senators were mad at the CEO, but nobody proposed doing anything to fix it. And the same people that caused this massive problem of this company that has immense market power, they are tasked with finding the next person to clean up the mess--the people created the mess. And I think there's an expectation setting that we've made for ourselves over the last 40 years where we don't expect our public institutions to do anything about what are clearly public problems. And so our politicians, our political leader, our elected leaders, and we let them off the hook, we let ourselves off the hook, and the result is a kind of Sovietization of America. Everybody knows there are a lot of unsafe planes flying around and everyone just sort of assumes someone else will do something about that.

([00:21:21](https://www.rev.com/transcript-editor/shared/SkEFeNlMuRw8yPAXvGZzlkHWgu7axN4Oymu-7pKd0tnblvf6FtExPOb9UzTbkfZWt_iijiRDgj260fkka7OVj2HBHHk?loadFrom=DocumentDeeplink&ts=1281.97)):

And I think that is a function of an ideology that we have embedded in our laws and in our culture. So this is, I'm going to start this quote with this is Mark Zuckerberg talking about why he hired former treasury official Sheryl Sandberg: "In a lot of ways, Facebook is more like a government than a traditional company. We have this large community of people and more than other technologies we're really setting policies." So you used to call Facebook a social utility. I think you would still see that attitude there. That's not actually new. I think in the last panel we understand there's always been this tension between the sovereign and corporations corporate charter constitution kind of considered sort of a corporate charter in a sense. Alexander Hamilton, he wanted to monopolize water power in New Jersey for the benefit of the nation through a corporation.

([00:22:18](https://www.rev.com/transcript-editor/shared/8Y-jvRM0aTo-WfvoR1Gv9HL7d4A_z8zWAOz47EKysl3Y88UMSkJSqJVRpV8m5OF5HI0m80UvokPyhZ9bYY3D06hQwBI?loadFrom=DocumentDeeplink&ts=1338.31)):

We saw the rise of the 19th century--a lot of bitter fights over ultra vires, over questions of how the state should regulate corporations. And in the Progressive Era, and this is something that I think people are kind of, as we were wrestle with the too big to fail institutions, like banks, like Boeing, things like that, we are rediscovering, all of us a history, particularly the history of the Progressive Era of the early 1900s. One way to look at it is to understand that Progressives were trying to, and they descended into both parties, Progressives were trying to build para-state institutions outside the government to govern because they didn't trust democratically elected officials to do things. In one of these, probably the most important para-state institutions were corporate America, large national corporations. The 1930s--from that period until the 1930s--there were bitter fights over that question, where is the locus of legitimate governing power?

([00:23:28](https://www.rev.com/transcript-editor/shared/3akLadq1nK4Lwn1Z_U-NJjIgvt9Vy2wT2RbaV2cicltUQTnkxa0BU9k1WroCky4l11-yFUYk8R_w3Bb8500Vl6J8ifg?loadFrom=DocumentDeeplink&ts=1408.3)):

1950, Emmanuel Celler, who passed the Celler-Kefauver Act on merger control, it was very clear that the Congress passed a law to really restrict horizontal and vertical mergers. And you can look at the legislative history, it's just corporate concentration, it has to do with price theory, had a lot to do with fears of fascism. Emmanuel Celler said "monopolies brought Hitler to power." This was a common view forward from the 19th century fears of aristocracy turned into 20th century rhetoric.

([00:24:02](https://www.rev.com/transcript-editor/shared/J3k8tjNeuaVtQHEuarskEiQ0fdD-fWHy-lFK7ebr68JyTMpLUjjnYAG-9W6xWv2iR-oQrERsD2drz7xTn3hJJeddw1M?loadFrom=DocumentDeeplink&ts=1442.15)):

So we are now in a different position and that position where the legitimate locus of governing is in the hands of large corporations, it's a very unusual and weird place for America to be. And what happened was a revolution in the 1970s and that revolution came from both the right and the left. Sometimes I talk about sort of the odd couple, there's an odd couple of John Kenneth Galbraith and Robert Bork who kind of did it together. So Galbraith talked about how there has to be a little bit of monopoly in a corporation for it to be progressive and he thought that was a good thing. But Bork and Galrith shared a basic disdain for populism, for populistic tendencies that sought to put controls on corporations.

([00:24:47](https://www.rev.com/transcript-editor/shared/NSuE95HQatoWmLPjfwPn1lq6bCXJm-bFTaVrUop_ZfcDndN6y9ZMsoU3o4veageoCpc5yYT7GP47ZAo9Bjrj8iYB4l4?loadFrom=DocumentDeeplink&ts=1487.78)):

So today we have a situation where Mark Zuckerberg can say what he said. He's not the only one, Senator John Kennedy said, Facebook is not a corporation, it's a government. But a whole series of decisions in our courts that sometimes we don't look at as questions of corporate power--questions of the legitimate locus of governing--have put us in a kind of box, a Brezhnevian box. This would be things like Trinko, which an important antitrust decision, Reno v. ACLU, which essentially got rid of obscenity law. I don't know how you can square that with originalist intent. Murphy v. NCAA, which is basically legalized sports gambling: this is a very unusual thing for us to do in this country. Total Wine, which literally just said the 19th Amendment talking about alcohol regulation at state level, nah, dormant commerce clause overrules that. Citizens United. And then other policy choices like ISDS.

([00:25:54](https://www.rev.com/transcript-editor/shared/yQhthnX_IqwFQibs_i7L7sf9wDCwwqgVU3LacDM-Ci3RHPicf3aupLasyPkCjlStgWA1z24dhDR9jDaVEH5dI-H7baU?loadFrom=DocumentDeeplink&ts=1554.86)):

So now we're at a position where things like age gating and design requirements on children's websites and things like Amazon potentially using deceptive practices on user interfaces. Well, that's all under the ambit of a grossly expanded First Amendment. So today we're wrestling politically I think with what to do and you're seeing a lot of grumbling. You see renewal of tariffs. It's not a surprise that people are kind of grabbing for this dusty old tool of antitrust and trying to revive it. You see this on the left, but you also see it on the right, a lot of skepticism of ESG. They're trying to grab for the antitrust tool as well.

([00:26:37](https://www.rev.com/transcript-editor/shared/x9biLbTsXY6s9WIK2g_QNpUWnAZ_mYyiu4F_3PzkkXpn0dBMTYXSPO2o2ee9LUPMkEwJ_dALnNts1ryDtA_QFO_Ee9o?loadFrom=DocumentDeeplink&ts=1597.34)):

So I think fundamentally, the Constitution--not a suicide pact, the rest of it--we have this problem of dominant corporations, which we allowed to consolidate over the last 40 years and we're sitting here with a bunch of companies--Boeing is just the sort of leading example-- that have almost sovereign power over different parts of our society. They control and determine how a lot of our markets work and we are stuck because there is no ideological framework to actually address what are clearly public problems with this group of, I'll mention administrative state is a large question, but you have the challenge of dominant firms like Boeing. What are you going to do about that? And I think--why are there such creative limits to how we think about policymaking and law that we can't address such very obvious problems as that? So anyway, thank you for inviting me. Thank you for allowing me to offer these thoughts.

Hon. Gregory G. Katsas ([00:27:51](https://www.rev.com/transcript-editor/shared/Cx_8KFw6rhMF-lH6lHpuKc3f6fLZpihW1LM0hyS0aHsLcGcKMrF4n0PusWLJEMP4z5eK9npJA8gTgbZzR6aPwdIINp8?loadFrom=DocumentDeeplink&ts=1671.17)):

Okay. Next up, John, you're a hill staffer. Question is what if anything Congress can or should do about Citizens United? Your boss has introduced a bill to seemingly overrule it. I mean, reestablish some of the specific expenditure limits on corporations. Do you all think there are five votes on this Court to overrule, or is this mostly performative or is there a lot of subtlety there that I've missed?

John Ehrett ([00:28:33](https://www.rev.com/transcript-editor/shared/3P8lcVy8GRytc13nwrNm7M2jds3YEnc7-LF5oi6z9aDROYp2JgJzTZPPNtSMhuwQW8K7oAEG6C0-i2zSXp0ZbHAbRz8?loadFrom=DocumentDeeplink&ts=1713.6)):

Well, thanks for having me on this panel. I think the most important thing that a bill like this does--and my boss is a very smart constitutional attorney and he realizes the lay of the legal land on this--I think one of the biggest goals with legislation like this is to reopen a conversation that's been closed for a long time, or at least seemingly closed since 2010. The received wisdom in the conservative legal movement has been for a long time that Citizens United was a great decision. This was a breakthrough. This freed us from the tyranny of Buckley versus Valeo and a whole generation of bad campaign finance precedents. I actually remember defending this decision for about 45 minutes in Judge Kozinski's chambers back in the day. But the thing about conventional wisdom is that once it becomes conventional wisdom, it becomes that much harder to ask about the premises underlying that.

([00:29:16](https://www.rev.com/transcript-editor/shared/ONVdHi4sq9WqvGABa2ylMsHbS8cC2fy4vCHnMcwv0EO-EU-eodLD8WFicgWVvG8nbKQW2j13rcJ6leBWKmf9JpkFPuo?loadFrom=DocumentDeeplink&ts=1756.08)):

And so we knew our bill was a direct challenge to Citizens United, but we want to have the conversation about whether or not this is ultimately something that could be justified according to the originalist terms that has traditionally been articulated in. Now we could make the policy arguments about how this bill addresses the problem of big money in politics. I think my boss has messaged on that pretty extensively, but this is an audience of lawyers and we're originalists. I think this is a conversation among friends. This is a conversation about what originalism asks of us. What does it mean to be faithful originalists when we come to this question? One of my favorite philosophers is Alasdair MacIntyre and he makes the point that a tradition is an ongoing argument in many ways. You might agree on grounding premises, but you're negotiating to terms of those premises over time and arguing continually about what's a legitimate development of that tradition versus what's not.

([00:30:02](https://www.rev.com/transcript-editor/shared/Bw6Vge2aqnmmpOQFgbgKqtR7d6serX3jCK7cJ_vN_OeRQaIGudz6ZTIzySuTkgFlLsFkQp3y3BpLruS6QUCmG5HOCfI?loadFrom=DocumentDeeplink&ts=1802.23)):

And originalism, I think as we see it, broadly worked out since the 1970s or 1980s, where this method really first emerges. This is a tradition of thought in this sense and one of the questions that I think we should be asking now is this many years on from the early days of originalism, when we look at that tradition, can we take it to a deeper level than it's previously been taken? Can we do better history than we've done previously? Now, one of the strange things about the Citizens United opinion is just how short Justice Scalia's dissent, excuse me, his concurrence is, and Justice Scalia gives an originalist ostensibly response to Justice Stevens and his is very cursory. I think if you go back and reread it, you'll see how short this is, especially compared to everything that Justice Stevens is marshaling. And one of the biggest things that Justice Scalia does in that is he kind of uses the term corporation to cover a vast swat of entities that existed at the time of the founding.

([00:30:51](https://www.rev.com/transcript-editor/shared/DAUguksUtVXXb7WptoEQYgXa0gbGgKSrhjqSeMu6cwVJAdWEFtsg6g65QCzuS0qybElEH3EK_CNwBDHHDlnU_71f-M4?loadFrom=DocumentDeeplink&ts=1851.34)):

He doesn't do a lot of distinguishing between types of corporations or theory about whether or not these would logically possess the same categories of rights. So we think it's entirely legitimate for us to ask this far along in the originalist project and 14 years after Citizens United, whether or not Justice Scalia got that right. I think there are at least two reasons for wondering whether he did. And the first one is whether or not the founders in the cultural world they were occupying would've conceived of campaign finance restrictions, the sort of thing that were inconsistent with the First Amendment. Now in the American context, we tend to think of free speech rights as pretty much absolute as trumps versus the international idea of free speech rights as something to be put into a proportionality analysis versus other types of rights claims. I think a lot of us on a normative level see this as something that's really good.

([00:31:35](https://www.rev.com/transcript-editor/shared/MDSyAw0K0mwInoYe4fpdDrOwdyzjQbb2RJ7_fZNPbWjw1QY1meBpztMlLw-z8VhTS2atGVu05MvYHlDF_Znot3PwKxI?loadFrom=DocumentDeeplink&ts=1895.14)):

We are glad that there aren't hate speech laws, but I think if we go back to the founding era and we ask that question, what kind of world of rights thinking were the founders operating in, we see that it looks different than 20th century First Amendment case law. And Jud Campbell has done really good work on this in the Yale Law Journal, arguing that a natural rights-based analysis ultimately does leave many of the negotiation questions around First Amendment rights to the political process as opposed to the judicial process. As he writes, "recognition of natural rights simply set the terms of political debate, not the outcomes." So what the argument is, in political context then, is it's something where people can introduce Alien and Sedition acts and argue about whether or not that's legitimate First Amendment protected law and determine whether or not that's something that's consistent with the constitutional tradition.

([00:32:19](https://www.rev.com/transcript-editor/shared/OoSM9baXa1VTxsM9iPqA0h0UY_M1Rlsz41miCGug-eH291ZZsvYJu5M96oTWY-7dxYB82W5_Keq_AgFLDtvryRUM6OQ?loadFrom=DocumentDeeplink&ts=1939.12)):

They ultimately find that it's not, but the fact that this is a live question in the founding area does tell us something about how far our modern First Amendment jurisprudence has drifted from something that the founders would've found remotely intelligible. That's an extreme case, and I'm not suggesting that an originalist Supreme Court should go burn down huge amounts of First Amendment case law. The kinds of cases that the Court grants cert on--that is a value judgment in and of its own right. But if we're talking about the question that is of major national significance like Citizens United, like whether or not corporations as business corporations have broad free speech rights consistent with this huge bulk of very expansive 20th century First Amendment case law, then that question does in fact in terms of what the court grants cert on, what the court ultimately reopens, that question does begin to look a little different when we try to step back into the thought world that the founders were actually occupying.

([00:33:05](https://www.rev.com/transcript-editor/shared/MB6ePemIBNGMzMVkZf13tzuqj37RqtWO_6XzK5yacG5voZHqIH5QEt5zhbWGGEuN9H0EzfoOdTxfSx9ehqkwyZ_vAoA?loadFrom=DocumentDeeplink&ts=1985.03)):

But let's say we're not convinced by Campbell, not everybody has been. So I think we can ask then a question that a first panel asked: were corporations historically the natural possessors of a speech right? How far does this go? Now, the historical problem is that as I think Lael and others discussed, business corporations did look different in the founding area. They were narrowly limited in their powers. In 1819, you have John Marshall, the first Chief Justice arguing that a corporation "possesses only those properties which are the charter of its creation confers upon it either expressly or is incidental to its very existence." Which is to say it doesn't also possess the inherent properties that a human being also possesses. So when we think about this in metaphysical or philosophical terms, the business corporation of the founding era doesn't seem to map onto a natural person, especially not a natural person that has a really broad and expansive range of First Amendment rights that we've seen through case law that is developed in a comparatively short window of time when we look at the bigger American tradition.

([00:33:56](https://www.rev.com/transcript-editor/shared/e3Q8q19hjJjylwtNjw7yjIen7zl9NSBHc8DGWynV4c2NkgIgEYYlAhn27pXFAlF54VjWS_7o2Hu3w3Nk1g_G6omsTGg?loadFrom=DocumentDeeplink&ts=2036.42)):

And so our legislation wants to be an invitation for the court to re-ask this question to say, look, now we have a huge amount of originalist scholarship. The court's composition is very different, so a lot more intellectual resources are being devoted to the question of what makes for an effective originalism and what originalist claims ultimately demand of us. Justice Strine on the Delaware Supreme Court did a really deep dive into questioning the originalist underpinnings of the Citizens United decision and found them wanting, and that's exactly the kind of conversation we should be having. That's the kind of conversation we should be having more of, and one of the reasons that I'm really glad we have this panel today.

([00:34:28](https://www.rev.com/transcript-editor/shared/KFbxhWS4vNYHgZ4pGZ5OpMsTKdU6WBjhJQSNgK_r0tQj_mzxM-efYiWQQ8pBzZ9X-eLY9by6uN8dBuXp0qf35HqitRU?loadFrom=DocumentDeeplink&ts=2068.31)):

Just to briefly touch on something that Matt said previously, in terms of the implications of a failure to get this wrong for just our ability to do basic governance--and I work in Congress and so this is something that we're obviously concerned with. How can Congress be effective? And I think I might be getting a little ahead of this conference, but the NetChoice cases is really an example par excellence of this because you have, in this case social media platforms coming before the Supreme Court and alleging that their content moderation decisions, specifically their content removal decisions are First Amendment protected activity. That is, the platforms themselves are speakers in their own rights depending on what kind of content that they host or not. What's interesting about this is that the logic of Section 230, the liability shield that protects these tech platforms rests on a completely different premise. It rests on the idea that these are dumb conduits that don't engage in editorial oversight of this content at all. So in the Section 230 context, you have platforms alleging they're not speakers of the content that they host. In the NetChoice context before the Supreme Court, you have them saying for First Amendment purposes, they are speakers of the content that they host. The only way to resolve this is to get down to ask the fundamental question, what is the nature of this thing that is the corporation or the social media platform?

([00:35:40](https://www.rev.com/transcript-editor/shared/4j0QuUo6zbS0nT8WJrZbsJU0BLvWPj6Bt7lCcCPEQRVQexF3O5vw9NQJk6kZYSr4SdfAJgtZylDPgqYWeDVRL488WcA?loadFrom=DocumentDeeplink&ts=2140.8)):

I see Professor Ark is sitting in the front row and he taught me at the James Wilson Institute Fellowship a few years ago, and one of the things that he really emphasized was the importance of stating the principle in legal decisions. And this is something that the court has evaded doing for a long time. They're not stating the principle on what this thing is that is a social media platform, that is a corporation in this deeper sense. We have these words, these words have histories and concepts that might go well beyond what our immediate reflexive intuitions and associations with those things are. And if we're going to be faithful originalists, if we really want to execute the original public meaning and not what we retrofit and project backwards into the past, those are questions we have to ask.

Hon. Gregory G. Katsas ([00:36:25](https://www.rev.com/transcript-editor/shared/FylnUm2jWznSS3Ue0S-MT-nxj1EJ_046crVQDGKipFwKC42psRInKZ0XmMNffS_Gn0ah8yd_vkC_ttokheoOjMnQT1Y?loadFrom=DocumentDeeplink&ts=2185.86)):

Okay, Eric, you represent a state. Citizens United creates some pretty robust First Amendment rights for corporations and that, I assume creates some litigation challenges for you.

Eric Wessan ([00:36:41](https://www.rev.com/transcript-editor/shared/dNs5jr1KYqRjEoNcvLriVMci0X2lX93_JgN9XYFptJgYvx4Pxf7TqPwrCTqfciCN1iBC3gzA6Z0N1sJe2gKGgPI-I6g?loadFrom=DocumentDeeplink&ts=2201.7)):

Thank you, Judge, Alida of the Freedom of Thought Conference, FedSoc, and my fellow panelists. I'll try not to disappoint you as I bring the level of cerebrality down a few notches here. As Judge Katsas started off with his remarks, Mitt Romney said something along the lines of corporations are people too. And in law school, which I think many of the people in this room attended, we learned that that statement may not have been as deserving of the derision that media companies leveled on it. Now, I'll get to this in a little bit, but what might shock you is that many of those media companies are corporations too. Although as far as I can tell, none of them are natural persons, at least not yet.

([00:37:32](https://www.rev.com/transcript-editor/shared/bZvMUJqcmbagVpFyLUbOXNdQw6AoPqSsic-guGrLIYVu9h8dYrUYs104b8yGzHVGItHKsT7CLdNJ6nfbjlCta4mdy2g?loadFrom=DocumentDeeplink&ts=2252.97)):

And so to the extent that corporations are legal persons that then have many of the same rights of natural persons, but not all of them--I have yet to see the salon.com article calling for large corporations to have more voting rights, although perhaps there's other reasons for that--I think it's important to look at how Citizens United, which became this loadstar case for campaign finance, is also really a loadstar case for how constitutional rights, as found in corporations, can be applied. It's shocking to me when I see some recent articles or lists of the worst Supreme Court cases of all time, and I'm not going to necessarily delve too deep into what would make my list, but very frequently I see Citizens United right there on the top. And to me, that's a little shocking because even if, as many people increasingly on the left and right agree, that Citizens United certainly has its flaws and may even be wrongly decided, to say it's the worst decision in US Supreme Court history places it in some real, I guess to use the Washington Post another corporation's phrase like austere context.

([00:38:56](https://www.rev.com/transcript-editor/shared/b5Tw2KDivCNmBU0RXetpZVuYzGyxwR0PgdQHX_qBHESXtAZ8rMbJ4TukeHm-ykJgtSTveBB0mFAajuFYE9NrriGvtbU?loadFrom=DocumentDeeplink&ts=2336.98)):

So I'm going to approach this whole conversation a little bit more from a practitioner's perspective as Judge Katsas has noted trying to find how Citizens United actually applies in certain circumstances because as a state that passes laws, sometimes even laws that regulate legal persons as well as natural persons, we often face challenges to those laws. And man, oh man, when John was talking, all I could think is I wish that the Supreme Court had laid out some clear and easy to use test to figure out what is and is not constitutional. But before talking about the legal principles and Citizens United, I do think it's worth talking a little bit about the facts underlying the case, at least in broad terms because at least in conversations I've had, many people are not as familiar with what the case was actually about. This group directed and produced a movie called Hillary Clinton, The Movie, which was about Hillary Clinton, who's a big politician for various offices.

([00:40:13](https://www.rev.com/transcript-editor/shared/AkT5Grp9e_n8lh6sWTLZyee8GFcq9IaYdQNe7mlsCmlV1Mc5pf8TWMRVLeUuV4TtOTD9XwkzpErWwb1FRo0a60xbyD4?loadFrom=DocumentDeeplink&ts=2413.66)):

And in advance of then, or I guess in advance of Secretary Clinton's historic first ever second place finish by a woman in a major party's presidential campaign, Citizens United wanted to air this critical video and they wanted to air it for free on video on demand services, but they had the gall of wanting to do so close to an election. So, I think it's important to recognize that's the context in which this case arose. And I'm sure that I know there are a lot of people in here that have really studied this case deeply, and I may have gotten a specific or two wrong, but that's the gist of what the case was about. And then the Supreme Court held that the law that would've forbidden Citizens United from criticizing Hillary Clinton was constitutionally indistinct from other laws that would've prohibited activity that many people would think would otherwise be constitutionally protected, like the NRA running ads opposing a candidate that opposes Second Amendment rights or the Sierra Club from running ads opposing a candidate for office that supports sustainable lumber jacking or whatever it is that the Sierra Club is passionate about in the electioneering context.

([00:41:36](https://www.rev.com/transcript-editor/shared/pnhsJkGe5km6wD1b5ajFh87lwFuMaReFsw-Ud1RVNDiiEw9H-b1nA5IWHLLSIzWUYvjlGnyN55Qpcc9iGxWfPFN9b-4?loadFrom=DocumentDeeplink&ts=2496.53)):

And so extending to Citizens United the group, because I think it's important also as I talk, Citizens United the case versus the group, the right to engage in political speech, the Court enjoined enforcing parts of the law that would preclude what it had characterized as political speech. Before going too much further, I want to talk a little bit about what Chief Justice Roberts raised in his concurrence. We've had a little talk about the majority opinion, about Justice Scalia and Justice Stevens's back and forth on originalism. But Chief Justice Roberts raised the specter that constitutionally, there was very little distinction between entities like Citizens United and entities like the New York Times for political purposes. The law in question had a carve out for media companies, unlike Justice Powell's famous phrase, "I don't know a media company when I see it." So, I am not sure why a group that produces a documentary about a highly salient political official wouldn't count as a media company.

([00:42:40](https://www.rev.com/transcript-editor/shared/cv5BUwNa8TkG0NlDw_H-fio16Hsms7IOCDmRjhE6aY7dXgv_ZGzMeZ-UlQmjfxpv6KUqpzHw-51ORWOu4ZOyEyXTWcY?loadFrom=DocumentDeeplink&ts=2560.67)):

I'm not an expert in that area of the law, but what Chief Justice Roberts recognizes if Citizens United came out the other way, then media organizations and journalists under modifications to the law that was at issue in that case, could have faced criminal penalties for election-related coverage and not merely because of errors in their report. So in short, citizens United drew a constitutional line that extended deep First Amendment protections to the group broadly speaking of corporations. Okay, and besides saving journalists, many of whom seem extremely ungrateful for such a beneficial move by the court, and I know we're talking about the pros and cons here, so I hope none of you're too persuaded by Chief Justice Roberts' strong argument against Citizens United. But I think Citizens United itself introduced a high degree of controversy and tension not only into judiciary and the various follow-up cases and not only into the political sphere, but also into the corporations themselves.

([00:43:53](https://www.rev.com/transcript-editor/shared/fh1JIpgHzZfeT-f6kM1RC91GHod8-zqqsEYhG6ZavJyryhXTA6kg6jUqDpHe8iBPjCUOejmfvLQRbqOHpQEVtzHHPKk?loadFrom=DocumentDeeplink&ts=2633.24)):

Because any time constitutional rights with deep protections are extended and any possible attendant regulations are removed from the arena of political debate, it necessarily creates conflict and imbuing legal persons with some of the constitutional rights of natural persons such that they can speak. But as we all know, speech has consequences. There's no reason necessarily that just because they have the ability to speak that these organizations should speak. And that tension creates some real problems for the corporations themselves, at least under an area in which I have a little more familiarity, which is state law. As many of you may be surprised to hear, working for a state, I take state law very seriously. One of my primary directives from my boss, who is also an awesome lawyer, is to defend the laws of the state of Iowa. And in many states, corporations, their management have obligations to their owners and to their shareholders, various duties including a fiduciary duty, duty of loyalty, all sorts of duties that basically boil down to running your company well and competently or at least doing your best to try to do so.

([00:45:11](https://www.rev.com/transcript-editor/shared/464MyYZcxsbMhopwARd179NWvtfem7E2ckKwtbNhaR-hAbG7QiLRA5da60yREyHWAF4GWQBW2OrbyU-vkvIyZCl2qN4?loadFrom=DocumentDeeplink&ts=2711.19)):

And even nonprofit organizations often, and again depending on the state, have a stated purpose or a mission in their incorporating documents that is the purpose of that organization for which they're raising money and engaging in whatever activities they engage in. But yet after Citizens United, many of these corporations feel not only have the right to speak, as guaranteed by the US Supreme Court, but a lot of them feel an obligation to speak on issues that don't relate to any of those duties and also don't relate to, in the case of a nonprofit, their underlying mission. That is a real problem because sometimes speech has costs, speech has consequences, and those consequences may not be criminal and punitive from the government, but may lead to boycotts or economic losses. With recent controversies and different companies taking different stances, those have an impact on the bottom line.

([00:46:17](https://www.rev.com/transcript-editor/shared/aHiWtPo3xQA9E1JzVneK9ujsKtUKHLg3CUqMXb7-Ypt02_PbDxsp-UbYVYCI1UgILA1Q6HTWe37BIfgNQOUuC2Uq0CE?loadFrom=DocumentDeeplink&ts=2777.61)):

And to the extent that a company is affirmatively taking a stance in a way that causes harm and they're aware of that harm beforehand, I haven't seen any cases along those lines, but I would worry if I had a fiduciary duty and I was doing something that I knew was going to destroy shareholder value. That seems like a real problem for me or would if I were in that position. Thankfully, I don't believe I have any duties on that front. And nonprofit organizations that have a clear stated mission and that often are working towards that mission, now are opining on all sorts of matters that may not be tied to that mission. And while I understand broadly speaking, the concept of intersectionality and a win for one cause is a win for all the causes, I recently learned that sometimes causes are on opposite sides of an issue, and not every win means that everyone is a winner. I know that that kind of trade-off approach may not be a nice thing to hear, but it does impose real costs on organizations that decide to color outside of the lines.

([00:47:37](https://www.rev.com/transcript-editor/shared/uOodkU-zT5UR0UJQ4JHKXSrJRKRpFThEOyTc463_hyehMKkkNBiCIRIFX_mtYtUG77K0y74Bb8gDvz3GyptTWHZdKQw?loadFrom=DocumentDeeplink&ts=2857.66)):

And I think one question I have that hopefully the folks on this panel will help me with, because looking into a lot of these areas, it seems like there is some under theorization in play. And one analogy that immediately came to mind again just because when we get sued, especially over state laws, we're often talking about laws and legislative intent. We're usually saying don't think about the legislative intent because we try to be good originalists in our office, but everyone knows it can be really hard to discern the intent of a legislature for a variety of reasons. And I don't know why it would be any easier to discern when a corporation is speaking depending on its size and depending on how it's composed, who's speaking, when a big public company speaks, can that speech be attributed to all of its shareholders or just the management or some subset? And I know that there is definitely some work done there generally, but when it comes to the constitutional implications, I think those are big questions that need to be answered.

([00:48:45](https://www.rev.com/transcript-editor/shared/t70RkyZQHASbKtbOsHaU49sZ9SJNpuP8-XNgISbWE1dIjU-4zGKRo4HExb3_Vj4LtvBn-i8CIGLsk0e-2mu--hP5aVQ?loadFrom=DocumentDeeplink&ts=2925.22)):

Violating duties to the public, to shareholders, duties of candor, to potential donors--all of these are real risks that come with corporate speech. And so too, at the risk of potentially committing consumer fraud. If you have some store, I think I read an article in Canada, some cafe was there to hand out food for free, pay whatever you want. And they were some sort of nonprofit. I definitely don't know anything about Canadian nonprofit law, but if it turned out the whole thing was some kind of scheme and someone was making a profit and they were violating the local laws of that community, that would be a huge problem. And that would be a problem that Citizens United expansive protections for First Amendment speech would not protect them from.

([00:49:36](https://www.rev.com/transcript-editor/shared/L9vzDdDbZsjds8h8umcZ-fPKKrd76zgrw2TVAa48sHSkSHXZ-I_OFDPBcrbOhvFqV-F2wqgYN5ow9eZTpIXSr9cXoNI?loadFrom=DocumentDeeplink&ts=2976.04)):

Extending the First Amendment's, protections broadly to a wide group of entities and interpreting the First Amendment to cover a broad range of speech ensures continued tension as people get uncomfortable with speech that is protected. And as someone who talks a lot and often ends up with people feeling very uncomfortable, that is something I can sympathize with. But fortunately I'm not a corporation and I'm pretty sure that at least I have constitutional rights to say what I would like, as long as I'm not violating any other laws. But as this area of law continues to develop, critiques of extending such broad rights to corporations, which has long been a subject from the left, but I think increasingly is being thoughtfully challenged from the right as well, is something that will continue face increasing scrutiny.

([00:50:29](https://www.rev.com/transcript-editor/shared/4hpOdxIa4gwBwGDqhtd7m_bJIXu9RMGZ9Bpq9ynrwDnfDmsOwPjjYlD1-5hFaE_GXtMSvDoUoEam28NiQpvJR3WynSU?loadFrom=DocumentDeeplink&ts=3029.84)):

And with one last note about the extension of these rights, I think it's important to remember that many people in this room probably have strong policy preferences, and maybe even people in this room might disagree on things, but when an issue becomes constitutionalized and the ability to regulate or make policy in an area is removed from the public arena, one, the debate often becomes stultified because people are unable to address their concerns in the political process. But two, that even if you have really strong views, your views may not actually be what the Constitution as originally read were. That was something that's always tough for me because I like to think I'm always right on things. But as a recently married individual, I know that's definitely wrong, but I think that it really is important because it's easy to read the Constitution, especially when some of these parts have broad principles at stake. And to think, oh, my view of what is right is clearly what the founders intended because they're smart. I'm smart. What else could it be? But I'm going to put this out there, maybe you guys aren't on the same page as the founders were. I know often my instincts or intuitions might be at a step with what real historical research shows would've been the case back then and how they would've read or understood certain ideas and concepts.

([00:51:58](https://www.rev.com/transcript-editor/shared/8vdU5P763dYUp4Uv9yLuJKVygcnRDPZoYlFLCDEflyjG4WAhDO9hONXzqyfySGcx5AoatcaePmxiU1VUomZA_4Fl9nk?loadFrom=DocumentDeeplink&ts=3118.91)):

And so, especially in areas as important as those touching on political speech, recognizing that approaching these questions with some intellectual humility and knowing that you might be wrong even if you're totally right and your policy is the only thing standing between the republic and it falling apart, that doesn't necessarily mean that the Constitution is on your side on that argument is something that is really important and I think is worth highlighting, especially in the context of Citizens United. So thanks all for listening to that ramble, and thanks to my fellow panelists for all of your interesting thoughts. I've been actively taking notes, which is not my forte, but it's all really interesting stuff.

Hon. Gregory G. Katsas ([00:52:43](https://www.rev.com/transcript-editor/shared/egokvzuWi-Dgw2WZM30-dBuuBAPbOIhR6k3n0HxQH5-7wxVXkNGps10Keme6K81cYEB9A_YFAI01GwQVhlWIQrgCJ_0?loadFrom=DocumentDeeplink&ts=3163.76)):

Okay, I will give each of our panelists a chance to respond to comments. Professor Miller, we heard a fair amount of skepticism about Citizens United and corporate speech. Do you have any rebuttal? Yeah,

Prof. Robert Miller ([00:52:59](https://www.rev.com/transcript-editor/shared/d2f02HZ45fKmO9VFmKN48lNsQoANhkl5NQHNaQsGx4JzYKnxaZ-rEGVZRwxfXDncLygg4InEGaMfd0PMByGlRbfoHcQ?loadFrom=DocumentDeeplink&ts=3179.27)):

Sure. So following on a couple of things that were said, the internal corporate laws limiting corporate speech. So in other words, shareholders don't like what their board is doing. The board is out engaged in some form of political advocacy and so on. Is there a corporate law solution to that? The answer to that is usually no because under Delaware law, the board is required to manage the corporation in order to maximize shareholder value. And now that sounds really powerful because you can say, well, what are the examples given so far? What is Delta Airlines? How does advocating for or against voter ID laws maximize value for a major airline like Delta? It probably doesn't, but the problem is if you are a shareholder and you sue making that claim, you are going to run into the business judgment role. And what the business judgment rule says is that the court will not ask itself whether such political advocacy actually maximizes value for Delta shareholders.

([00:54:13](https://www.rev.com/transcript-editor/shared/rMF_cRjOKc4aPWEadoGexUN9ZpfN-wC_phIBD4sqpqTK2D9W-GengEN60bkCUUrJ6aoEE67XpC4Vv7c4Sl-Uv21y5zk?loadFrom=DocumentDeeplink&ts=3253.68)):

They'll ask themselves some other questions instead, like, did the Delta board think about this carefully before deciding to do it? Did they honestly sincerely, in their heart of hearts, believe it was in the best interest of Delta in the sense of maximizing value for shareholders? And as long as those two tests are passed, it's going to, the action will be upheld. So shareholders have very little ability, legal ability, to control bad speech by corporations. But as I constantly tell my students, if you look at a corporation and the first thing you ask yourself is what's legal and what's illegal? What's the relevant legal rule? You've usually missed the point. What actually controls corporations or market realities. So, Johnny Carson used to say, I would never tell a political joke because I'll immediately lose half the audience---that same thing is very true for corporations. Corporations by and large don't want to get into the political advocacy business.

([00:55:12](https://www.rev.com/transcript-editor/shared/iOz95mAx8eBLc-00iB4-Q5WyhOdxnpuYwoIzcSv3fzBdTEvGzsV6WrX0FTzVzaE3cJY4Hhz_6KhbjvHrEZWuOH-j2F8?loadFrom=DocumentDeeplink&ts=3312.84)):

You can see how it blows up on them. Think the Bud Light Marketing fiasco. More than that, more than any other time in history, shareholders now have much more power over corporations than they've ever had in the past. Every large ublicly traded corporation in America, 60, 70, 80% of the shares are held by large institutions. There are now a handful of, measured in a couple hundred, large institutions that will have controlling positions taken together in every corporation. These people all know each other, they all have each other on speed dial. They're easily organized. And most CEOs spend a good part of their time going out talking to their largest shareholders to make sure those people are happy. And if they turns out that they start to be unhappy, then there's another form of market participant called the activist shareholder, who will announce that they're going to run a slate of directors or a short slate of directors in less than a whole board in order to change the direction of the company.

([00:56:19](https://www.rev.com/transcript-editor/shared/Xb-_WtBhIuMNCXinjGNMcV2QoEvBIqBbXWuiF6ziezNtn_gvBujBgu3nygIsugKfQBTZcTbOL88OjiAFfEtYie4Em0k?loadFrom=DocumentDeeplink&ts=3379.95)):

And these people tend to be fairly successful. You don't hear about so many of the successes because the corporations will quickly figure out that they're going to lose the proxy contest and then they settle with the activists. So there are not lots of examples of shareholders losing proxy contests. Disney just won one against Norman Phelps. But there are plenty of examples of companies agreeing with the shareholders about what the shareholders want. So if you're interested in really what controls corporate speech, it's not the law. People like us lawyers, we always tend to think of--it's the law. It's usually not the law. Here, It's market forces.

Matt Stoller ([00:57:06](https://www.rev.com/transcript-editor/shared/lkfpbGtW-1Z4qwIvMjrttVlvkLQLCq7iYoXG-XeKFG4GF3xF5KJyVQIGtHguSqzqhG2lteXiEo4kI-N_uMzVl6qtY4M?loadFrom=DocumentDeeplink&ts=3426.22)):

I mean, I think Citizens United was--it's hard to square a kind of the way that we read First Amendment law in an era of broadcast television, lots of newspapers, with an era where we have one search engine that everybody uses and a small number of firms that really structure speech. And I think that kind of--gets to the heart of the problem. Citizens United in and of itself is, I think you could read it as protecting certain speech rights--you could read it in many different ways. But it came after decades of consolidation. It came after tremendous relaxation of antitrust laws that facilitated the rise of firms with immense market power. And throughout American history, we've always seen such concentrations of economic power as concentrations of political power. So, there are clear tensions between claims of speech, free speech rights in Section 230 which came out and have come out in several Supreme Court deliberations this session.

([00:58:34](https://www.rev.com/transcript-editor/shared/OqnHyjp5Hk3oJi6LzpL_HTra_o5oXTPLDUMPxA_Nbp1NP0UWxEijQsmdl7CJXL12MSgmzuyJ5DxedaLsERu9sG7zCPE?loadFrom=DocumentDeeplink&ts=3514)):

But fundamentally, these decisions just don't make sense for a world in which it's a digital world in which First Amendment can potentially cover everything. And so we are moving on from Citizens United. The question is, where do we draw the line on how the state and public bodies can structure the workings of corporations? And the way that I think about it is, I think the second of Judge Katsas' point, which is that you distinguish between big business and little business because one of them is more akin to natural personhood. And the other one isn't--the other one is more akin to a private government.

John Ehrett ([00:59:24](https://www.rev.com/transcript-editor/shared/taDTSnoPmi8Vbyet-u4-sLuqndvV-DKyeeYUQI6uiNGd84GWu4cglUDl7Fd1qFi2Nl_y3kPmoN60Kjv98zOwhFid1hM?loadFrom=DocumentDeeplink&ts=3564.05)):

I just wanted to briefly follow up on something that Professor Miller said--that corporations don't want to get into the political business because I think this really does kind of cut to the quick of what we're talking about when we talk about reopening questions about the nature and origin of the corporation. And I guess my response to that would be the corporation is always political. In William Blackstone, the king himself is defined as a corporation's sole, S-O-L-E, to refer to the fact that his regal authority persists over time. That's what a corporation does. It endures over time. So corporations, just in the very oldest sense, just a body that continues over time, that has rights and responsibilities and powers that go on beyond time. And so when we raise the question of what power corporations exercise, we're asking a question about what the nature of politics is, and that do we find ourselves as we go about our daily lives, in different hierarchies of authority, that exercise control or governance of various aspects of our lives.

([01:00:15](https://www.rev.com/transcript-editor/shared/bL8TpXpfF9MrWab_LjWrWxCt6P57HjvVnfAUBTEXmbd-Sbs6ljrsFWlztWsH6yzvx3ldEREI84Wr04-TQY9C8rMVRic?loadFrom=DocumentDeeplink&ts=3615.44)):

And as Matt said, corporations do that in a lot of ways, especially huge corporations that drive and shape our economy, our speech, our political decision-making. These are quintessentially political questions. And in choosing to say that basically we're going to take pretty hands-off approach to the regulation of the corporate space, this kind of demarcation of an independent economic domain, that's a value judgment in and of itself. It's saying that we believe that the values that can be gained from a pretty hands-off approach to corporate governance ultimately serve the good of the country in a deeper way. And that's the question that I think we're really asking ourselves now, can we pass legislation that allows us to protect kids from the most abusive kind of material on the internet? And you've got huge amounts of tech companies, huge amounts of lobbying dollars, simply saying no, that they'd like to continue to have the ability to profit immensely from a lack of regulation in this space. Some companies are good actors, so I don't want to downplay that, but some of the biggest companies have really been bad actors in this space. And so when we asked ourselves the question of are corporations engaged in political business by the fact that we've let them grow to this point, that we have declined to enforce our antitrust laws, that we've created legal doctrines that give them rights analogous to those of the natural person, we have made them political and in fact, they were always political.

Eric Wessan ([01:01:26](https://www.rev.com/transcript-editor/shared/0_ph2COtgo7CCsYvgP13NU_TcuY_Iw2YVpmKNq1f2crxtJg8bVMC4_11y9uGUSCS8KT4sfMCUegfrpIIRsN9S_zUENI?loadFrom=DocumentDeeplink&ts=3686.57)):

And I'll just build off two statements or two ideas raised by John and Professor Miller. First, I think dealing with this issue of the corporations not wanting to be political and the shareholder voting situation, one area that I think is really worth paying attention to is in the area of proxy advisors. So a lot of you have investments, a lot of pension funds have investments. The big three investment companies have investments and many, there are so many companies, and they each have all of these different shareholder votes that go on. Some are binding, some are non-binding, some are resolutions. They're just a couple companies that basically make recommendations on how to vote, and depending on which company and which vote, sometimes those votes are not done explicitly in accordance with fiduciary duty, but instead with ESG concerns to achieve certain preferred political outcomes. So maybe the company is agnostic on politics, but if the folks voting their shares are all being advised by politically inclined actors, then they might end up in the business of politics even unintentionally or maybe intentionally, but with some plausible deniability.

([01:02:43](https://www.rev.com/transcript-editor/shared/mzgvYwbGthnX-afCkJT-VHRoYqPx4MbmyNSeLP5HkXb9hdgBxB8-0PVK2A-zXspamjoN4FxDXhJrfmvYr4U1EkMI9IY?loadFrom=DocumentDeeplink&ts=3763.44)):

And I think that that's another area that's really worth some deeper exploration. And then to just turn very quickly to something that John dealt with, mentioned as protecting kids. I just had an argument in the Eighth Circuit about state law requiring age inappropriate books not be on public school library shelves. And I think a lot of people in this room might have different views on that, but if the state government cannot choose what books go on to the state school funded shelves, I think that even beyond corporations, there just might be some real questions about the limits of the First Amendment and how that affects government's ability to regulate and protect children. And of course, I'd be really remiss if I didn't say that if these issues all sound really interesting to you, then going to work in a state AG's office means that you get exposure to them all the time. And even if you have the mistaken view that you don't want to end up in Des Moines and you want to go somewhere else, you should definitely after the panel come up and talk because these issues are at the forefront. And if this is interesting and you don't like the weather in June or July in DC, maybe you want to be somewhere else.

Hon. Gregory G. Katsas ([01:04:02](https://www.rev.com/transcript-editor/shared/wq2AqWMXo-zd9njKkCjYVdfE0gdnpNzpgpYTPf3jfqt94EKPbzEeo7sKpwUaTZjbaRWH8EIqwOmLtsaowQxjnW71Zkc?loadFrom=DocumentDeeplink&ts=3842.34)):

Alright, we'll go to Q and A. If people want to start lining up. I'm just going to exercise a moderator's prerogative and ask one or two quickies. So Professor Miller, short-term versus long-term, let's stipulate that corporations as a practical matter, things change, markets change. The leading corporations today might not be around in 10 or 20 years, but in the short-term, there's a raging debate about a contested election. There are two or three platforms that are dominant. One side--speakers on one side of that debate are getting kicked off the platforms, and then the response is, well go build your own damn platform. And then they try with Parler and Parler gets kicked off Amazon. I mean, it seems like in the short-term, that's--

Prof. Robert Miller ([01:05:00](https://www.rev.com/transcript-editor/shared/755Gqs0dSLRUuBd90jm51F_yxYqwbJNrvcJk8wMkwPJcvRIocHhbp9uy02YygwvmVY6KZSiamIT5DeG4uhhf5CvO5y8?loadFrom=DocumentDeeplink&ts=3900.69)):

--That's an antitrust issue. That's not corporate issue. The same issue would exist if the entity was not organized as a corporation, but was organized as an LLC or as a partnership. So, market power is bad, whether it's held by an individual, by a corporation, by a cartel. I'm all against market power, but that's not a corporate issue properly speaking. Market power can exist in many different forms. It doesn't have to be, it has nothing really to do with being corporate. Okay.

Hon. Gregory G. Katsas ([01:05:33](https://www.rev.com/transcript-editor/shared/iVT0oCmh3XIrZQQx6JGCquRgyX29wWynHlwMmeCiBr5xyI8QnTx541CiDooHYbdP5x158bih0hk7CXBQP4qIOlWdkjM?loadFrom=DocumentDeeplink&ts=3933.31)):

Matt, any follow up on that?

Eric Wessan ([01:05:37](https://www.rev.com/transcript-editor/shared/RTvNX1uE5misvYNAkUiBAlvPyNhqaF9qZGCu7t8yXjGBgNyeXyn1hW14u1b5ZdwYCvBznjGqFI1MoWaDUX27vQx_XiM?loadFrom=DocumentDeeplink&ts=3937.27)):

I think it's all pretty bad, but at least we were protected from the Russian disinformation regarding Hunter Biden's laptop.

Hon. Gregory G. Katsas ([01:05:47](https://www.rev.com/transcript-editor/shared/rwneDL-zpnacnG_VRlsuca6DuyP-HxSNxcuSFx-PwTz-8bGhcak6iNX01KasMFXvHqQP8nijhEteLM8vPCM-jQpJWmg?loadFrom=DocumentDeeplink&ts=3947.17)):

Alright, one more, one more and then we'll go to the audience. So Eric, a lot of your comments on the facts of Citizens United, you mentioned the NRA, Sierra Club, I mentioned Hobby Lobby. This sort of suggests we might want to try to draw a line between Google and Apple and corporations like that. So anyone want to take a stab at what that line should be? I threw out a couple of possibilities, but let's try to pin that down.

Eric Wessan ([01:06:22](https://www.rev.com/transcript-editor/shared/ZAreDch6a2guXMrZ7YIABTAPXkSWG36Fuz6bFurdDIY-tNr6uyiUHJcQn42Kw-G3p0_C1zRVTPJLUy15uyGLYaikb6Q?loadFrom=DocumentDeeplink&ts=3982.09)):

Luckily, I'm not a legislator, so I am not going to be the one--

Hon. Gregory G. Katsas ([01:06:25](https://www.rev.com/transcript-editor/shared/QTQ4CZPEwbqCDAKTRL2ultLrrxVncDNk5oEWdMTXILMXm8UeVXFPEeFjofaEtnOAysl7znC7Jw-eZ7UKOKhbsdsnJnU?loadFrom=DocumentDeeplink&ts=3985.81)):

--Or a constitutional line.

Eric Wessan ([01:06:28](https://www.rev.com/transcript-editor/shared/BXLCXlYdHk-1c5I-fVG0Kxf-v1ppMs9rS_VIObNxQK18DCzaiDUWXfzjRJ4_hPjj5ZTcDDagIcEHR43dhTtCYW1DVp4?loadFrom=DocumentDeeplink&ts=3988.78)):

Or a constitution. That's true. I've never been accused of that before. But the subjects that you listed, I thought the ways to differentiate are really interesting. They match a little bit with some of the excellent work that Texas and Florida have done in trying to help clarify this whole confusing area of law. But ultimately, there has to be some way to allow corporations to operate and to provide their products while at the same time protecting the natural persons that are in the country and using those products from coercion or any sort of other negative consequence. And historically, that type of work has been done via state police powers and other ways of trying for the states to serve in their role as sandboxes of democracy or whatever the quote is, which may or may not be a good thing. But yeah.

Hon. Gregory G. Katsas ([01:07:25](https://www.rev.com/transcript-editor/shared/lMpGFwe4EdCcra8hst2BftCB88kCVeyP6AsB3F64smB1U4hD-jdlhXIus5kQFfvdL8Lcd0Cw5IjcJNey8D6svBMVzQ4?loadFrom=DocumentDeeplink&ts=4045.9)):

Alright, Professor Miller.

Prof. Robert Miller ([01:07:27](https://www.rev.com/transcript-editor/shared/N50A3jJTImR9HRPb0btvk5ZoZYMj55U0cvIAAvXDsNHtxdD5Ypq1yxHDQ2KgPaxrSt1TaWVKbWWIye3gVK-XAvCCb2k?loadFrom=DocumentDeeplink&ts=4047.01)):

Let's see how hard that distinction is to draw. Eric just mentioned Twitter, taking off the New York Post--

Eric Wessan ([01:07:36](https://www.rev.com/transcript-editor/shared/6Yt8Zsi7WpXYP8mzrc0GPqpLESeLbNMzGys5O4_2BXvJKOGDU8RH8rasTes4Mbnte_tZmBI4Z_lt-z__o4qASWXHfP8?loadFrom=DocumentDeeplink&ts=4056.25)):

--New York Post.

Prof. Robert Miller ([01:07:36](https://www.rev.com/transcript-editor/shared/62vHlCQsJQR_GTzArMKAjWQln232jYkUZ2Q2gJ1Hj-FGLmkRNH1Xf7v4g3HBBVwZ7Z96Rq4x0xk6b51BV0M-DEjeHvw?loadFrom=DocumentDeeplink&ts=4056.88)):

Yeah. Okay. Twitter's a corporation, right? Well, no, actually, yeah, of course it is. But Twitter is controlled by Elon Musk. So if you start limiting Twitter's rights, you're really limiting Elon Musk's rights. Facebook is a multi-billion dollar publicly traded corporation, but is controlled by Matt Zuckerberg. He has all the voting shares. So it's really one individual right there that you're talking about: Matt Zuckerberg, not the corporation. Drawing that line between the public company and the non-public company--there are gigantic companies that are not public. There are gigantic companies which have lots of shares trading off exchanges that don't count as public because they haven't hit the magic number of shareholders yet. I think drawing that distinction is going to prove to be impossible.

Hon. Gregory G. Katsas ([01:08:27](https://www.rev.com/transcript-editor/shared/_P4fFAz6shKXXDBeNNkWUdOtxr62nKB5tcpd2vNk9yqNSk4-A2xzginXkxMuQP9b-8GOWpHx_smnbVizG89fsxm5lxw?loadFrom=DocumentDeeplink&ts=4107.86)):

Let's go to questions--I can't see in the lights. Is that John? Yes. Okay, John.

Attendee #1 ([01:08:32](https://www.rev.com/transcript-editor/shared/kn_FMsTD75caiScBDkEDW3s1j0lcMKfMgRoSk9U9reQE1n1qtlGbHn-KYumibeBh0ULbP5lLhxP8LSlwSNmDKkeHkP0?loadFrom=DocumentDeeplink&ts=4112.24)):

So Matt, a question for you that Professor Miller anticipated in part. You mentioned that it may make more sense to accord an extension of natural rights to smaller companies and intuitively there's, I think there's some resonance to that. Masterpiece Cakeshop is in some way an extension of Jack Phillips, the man, and imputing to him, to Masterpiece Cakeshop, certain First Amendment rights seems to be pretty attractive. How would you look at the other dimension in terms of ownership structure? So between closely and widely held companies irrespective of size? The Twitter example is a good one because Twitter was, through the period in question with the laptop story--it was publicly traded, it was widely held, and it was reflective of the big tech blob. Whereas, since Elon took it private, it has come to assume more of the characteristics of his distinctive personality. So do you think there's a reason why ownership structure may affect whether it makes sense to impute more of these sort of mental or conscience rights of speech or religion to large companies if privately held or closely held?

Matt Stoller ([01:09:59](https://www.rev.com/transcript-editor/shared/vqAOoGPteGXDhdU1TPcEcShinzXt728xOwEirWy-Kqonh0-rvdBwR1lHWTlvXjE7FCg03U7z1mRMj8OEe-OguwMVolw?loadFrom=DocumentDeeplink&ts=4199.42)):

I mean, it's interesting to say, well, Twitter is now Elon Musk's company or Facebook is Mark Zuckerberg's company, and therefore structuring rules around Facebook or Twitter is an infringement on their rights. Because, I think when Mark Zuckerberg does things with Facebook, a lot of people are affected by it and their rights are affected. It's kind of like saying, well, the shareholders of Boeing, I mean--sorry to get back to Boeing--I'm just afraid flying. But it's like other people are affected other than Boeing shareholders when the 737 max crashes, right? There's an element here of unreality, right? Twitter is public infrastructure. I mean, yes, there are private shareholders, but it's public infrastructure. So is Facebook. I mean, we all know this is intuitive to how we think about the world. I guess--

Prof. Robert Miller ([01:10:59](https://www.rev.com/transcript-editor/shared/Wd4x1fp3AHlqZOw8LmvclGYfOrMc5jmmzDqfxN30AZch1AapvmGbpG0Zv_4hxLAWNh4-nVyHawvZCxwIvgXnnlDNE9Q?loadFrom=DocumentDeeplink&ts=4259.51)):

--Not all of us think of that as being public just to say--

Matt Stoller ([01:11:01](https://www.rev.com/transcript-editor/shared/EkPGFflnZq7ue5lAkVPVhKAbALsejjqPJUlqRskLiIOt7M70_o67oHrBH3v0StUEKQzdFKh6Ap1lufUZJiyKi4iNAOc?loadFrom=DocumentDeeplink&ts=4261.91)):

--Multiple Supreme Court justices talked about how the internet and social media is our town square--is our digital town square. It may not be intuitive to certain readings of corporate law, but it's intuitive to everyone on a basic level, which is why everyone is mad at big tech. And so I'm not a lawyer, I don't really have any credentials. I feel like there is a level of unreality here where we're not--when you look at how Google, for example, organizes its content moderation or Visa, MasterCard, or large corporations with essentially governing power, they start to look like administrative states. They almost, if you look at Visa, MasterCard or Visa's kind of guidebook, they have notice in comment periods, they have rulemaking, right?

([01:12:02](https://www.rev.com/transcript-editor/shared/WjPnZIYpBVjooF7aicxcxc06lhVmeyXl5PTrBZtRm8wSnpHjf-pWOzneS6XShM01juDQkbgjMpYmKiHVUiSOwlxba3o?loadFrom=DocumentDeeplink&ts=4322.97)):

There's a reason why it's really easy to move back and forth between a large government administration and a large tech firm. In a sense, it's the same work. I remember when Amazon hired a direct, they were hiring for their public policy team, but they didn't mean lobbying. They meant actually policy for their marketplace. So it's weird that we talk about corporations like they're the private property of shareholders, when really what they are are public infrastructure. It's how we've always understood these kinds of institutions. It's how we've always governed them and it sort of feels like we need to get back to thinking about the governance of public corporations as a discreet important policy and legal area in and of itself. I just think the whole looking at this as a speech question is weird. It's just weird. The language doesn't fit. The reality doesn't fit.

Hon. Gregory G. Katsas ([01:12:55](https://www.rev.com/transcript-editor/shared/XAH5OjJS3IoDNN00kzQAaDPUPVHEjYzjdOAAJoDwlUPiYJqosmmwsxMSa856RV2t6RtetimAGUFmd_JTQ_iIw7Tz16U?loadFrom=DocumentDeeplink&ts=4375.92)):

Okay. Other side of the room.

Attendee #2 ([01:12:57](https://www.rev.com/transcript-editor/shared/rWqG5ar2hSZl6X32BNrRy2707GGXTUlAI_PgvFTjnfu7m4FeP_5m124FYfSBGFPdM9wbErx-18-l3upkFtOXpQzbGgo?loadFrom=DocumentDeeplink&ts=4377.66)):

Well, a great segue, Matt, my question really was on the other flipping side of that coin. My question really is, and for all panelists, are there solutions to come up with the problem, two problems that have been mentioned today? One problem being the fiduciary duty to those of us who are shareholders and the interest of the corporation, I guess would be better put the fiduciary interest to the corporation within the charter and within its mission, what can be done to curtail wild diversions from that path, if anything? One. Second, what can be done, if anything, to rein in the unbridled aggregation of shareholder proxies that was mentioned as a means of moving corporations again away from their mission? Are there solutions you have for these things?

Matt Stoller ([01:13:57](https://www.rev.com/transcript-editor/shared/wb_cjGI7njUHKDGYI-Vd5VUVCK1yfHHPULA9826-ILn9toqRnA9_k8LwUav71yJ5gcPl6IB4KuNiot81K20D_ToD8Po?loadFrom=DocumentDeeplink&ts=4437.78)):

Alright, well, I mean this is a hammer nail question. I would just say antitrust and antitrust, the wild diversion from the corporate charter. Something I've been wanting to say for a while in this because I think both this panel and the last panel, there's this view of, well, what Disney's doing in Florida has nothing to do with their business, they just decided they wanted to do this. Or what American Airlines is doing with Indiana voting rights has nothing to do with profit. But I listened to people at Disney talking about why gay rights is fundamental to their business. They think it makes them money. Maybe they're wrong, maybe they're right, but it's a little bit of a dodge to say, well, that has nothing to do with their fiduciary obligation. It's just they're doing something to make money in a way that maybe conservatives don't like or liberals don't like. So is this really a fiduciary question or is this just an attempt to square an ideology in which we should be hands off towards corporations with the fact that we don't like what corporations are doing?

Attendee #2 ([01:15:06](https://www.rev.com/transcript-editor/shared/XUph7gKzVC1a4OTj2OIGWTEC2tWqp1mY6LNXNIM7P0dZzOATOkKnV-Ik8C97c38iPBp5ojPyelN3YggGCXLVWTIaD10?loadFrom=DocumentDeeplink&ts=4506.34)):

It is a hammer and nail question. I agree with you. I understand your position, but I'd really love to hear from panelists who may disagree with you and have the concern that I just expressed.

Prof. Robert Miller ([01:15:18](https://www.rev.com/transcript-editor/shared/o9vJIfV8P3uf7vBnJysUVep4NpNE6r0FS56q1r2nXCxqJ7FFzFO1GrZSwhKJ9LeWwb1RXO-5bj1k76FqjtXIbUfZMlw?loadFrom=DocumentDeeplink&ts=4518.61)):

So I'm delighted to actually have something to agree with you about. I do think that, I think Disney really thinks that this is what's in their best interest. Maybe they're wrong, they probably are, but I don't know. I don't know--theme pal parks, right? So Disney's share price has also been cut in half since 2021. Partly that has to do with the fact that there's streaming businesses is a disaster, but this is probably part of it. So there are built-in mechanisms to the system. Like eventually, if you run your company badly enough, as Henry Manny taught us 60 years ago, someone else can take you over and fix it.

([01:15:57](https://www.rev.com/transcript-editor/shared/pialmaOdPz9fQDTj9o5AmSu8hbPYC-NMbMy58KFY5btzECFFiM5Scg7ppBb4NJJXXg_4KVhGTcmuK9EEgeDfiUpePi8?loadFrom=DocumentDeeplink&ts=4557.05)):

On the proxy advisory question. So whenever there's a contested proxy contest, the two proxy advisory firms ISS, which has about 80% of the proxy market, and Glass Lewis, which has the other 20, all big institutional shareholders subscribe to both. They get the reports from both, and they also have their own professionals who tend to make up their own minds about these things. So all the big three and even Vanguard, State Street, BlackRock, all the big shareholder institutions, even ones much smaller than those, they have their own staff. They make up their own minds. And this is what always happens: in a contested proxy election, the 20 to 25% of the shares held by retail shareholders, mom and pop--they vote the way management tells them, they couldn't care less what the proxy advisors say. They probably don't even know if there's an activist on board, the activists will have a significant number of shares and there'll be some other activists clubbing with them, and those activists will vote the way the activist wants. And the balance of power is held by the large institutional shareholders. The people like Vanguard, the Vanguard five hundreds, the passive funds--and what those people want is what happens. And sometimes they do with proxy advisors and sometimes they don't.

Hon. Gregory G. Katsas ([01:17:16](https://www.rev.com/transcript-editor/shared/K_d2rLyc0YqsRGTXLcF0lsLmP3xn_thY9ULKpe8mMuX5pZ-4iLjrok6Q6kU-ai_X0BfvfwZkXP58j4puB8VSx4qiNSI?loadFrom=DocumentDeeplink&ts=4636.04)):

Next question.

Attendee #3 ([01:17:16](https://www.rev.com/transcript-editor/shared/r02GQlVFJapufYFSnNOcGqQpOSSyf3zzLZV5ARG52r72muugGIZsOruI7kDqSPRtlCKXUZdEBHmL9Og2MDKwrfxw-88?loadFrom=DocumentDeeplink&ts=4636.67)):

Thank you. Thank you. As big as a proponent as I am of antitrust solutions wherever they exist, as Judge Cass has pointed out, many of Senator Hawley's proposals would not survive Supreme Court scrutiny as Senator Hawley himself absolutely is aware of. Given that Congress has the role of writing amendments to the Constitution, I'm really curious to hear first what sort of amendment you would propose to address some of those problems. And then second, given that states have co-equal power under the Article Five convention process to write amendments, as well as the ultimate step of ratification, I'm really curious from Mr. Wessan what sort of proposal you would think would address some of your concerns and survive that very high bar of ratification by 34 states.

John Ehrett ([01:18:09](https://www.rev.com/transcript-editor/shared/s5EPDOYTe1y301bUGTShJ5v-08jlttYp70pG-bn0W0xLzWJUAFC-1_PKo1ASbMnDggpXMoruri9F4nSmw_6sO7hcZUg?loadFrom=DocumentDeeplink&ts=4689.71)):

Sure. So on the constitutional amendment front, I think there are already pretty well-tailored constitutional amendment proposals for Citizens United in particular that are floating around out there. I think there are multiple at this point, and so at least we were concerned within our legislation was specifically the problem of publicly traded companies making independent expenditures, funding political ads, or contributing to Super PACs. But there is a larger conversation that could be had about exactly what kind of constitutional amendment you would want. I think the broader goal that we would have in such an amendment would be to thin out the constitutionalization of questions involving corporate rights and corporate duties and to make that be Congress's responsibility. Because just because we say that corporations don't have a speech right under the First Amendment, doesn't mean that we can't negotiate questions of who's speaking in what particular context and who is liable for what in the context of statutory law. That should be the business of Congress. That's something that Congress should be doing. We don't need to necessarily touch the Constitution to do that, and I think it might be easier to just simply have the court overturn Citizens United than pass the constitutional amendment, cause you got to get states involved in that process. And so ideally I think you'd get some sort of legislation passed and have a test case that results in the reversal of Citizens United. But a constitutional amendment on that front would be wonderful if something like that could happen.

Eric Wessan ([01:19:23](https://www.rev.com/transcript-editor/shared/A35sS3PiqyOzGmpGg1K9h9i8_9jzyThsw_Mkqj-rFHYpdzeV1VUvX1Ac_EtmF82FreR0lE_K2NsdOp_C1eJ5epJngiA?loadFrom=DocumentDeeplink&ts=4763.54)):

I don't have any specific language, but I think that process wise, I'd prefer to see, and this is not just for the First Amendment, but across the board, a move towards a jurisprudence closer to the original understanding of what the various amendments meant at the relevant times along with the necessary context for those amendments. And I think John mentioned Professor Ark is there. I think a lot of that may incorporate some idea of the natural rights understanding that a lot of the founders had. But I think once we reset or if we reset to a place where the Constitution is being applied as it's originally understood, at that point I'll have a much better idea of what sort of changes should be made. But when you're too far afield from what the text means, it becomes really difficult to know what additional or new text, how that might be interpreted and what new pitfalls that might introduce into the system. So I'd rather figure out what we sort of get our known unknowns figured out first and then we can move on to the unknowns after that.

Hon. Gregory G. Katsas ([01:20:28](https://www.rev.com/transcript-editor/shared/pb-HARP3lcXX-OYn7sle6-NDqtTufJd8LXvlxKTBkcJgERLXr6Wjf4yvFy-6SiuvfgSCVESv5T2LExjCJKC7_m4aMrc?loadFrom=DocumentDeeplink&ts=4828.26)):

Thank you. Let's keep going. I see we're running a little short on time and I see at the back of the line the Chief Executive Officer of the Federalist Society, I want to make sure he gets to the mic. So, next question over here.

Attendee #4 ([01:20:43](https://www.rev.com/transcript-editor/shared/AbIoWj5a0QDPCzzrxKOeJnB6sds1RrEtKEXNOj-eQ5U4uMJl_qFEpsiC1JlJC_5d4Jlc8S0k4czAqfbGMap2BcRpZPo?loadFrom=DocumentDeeplink&ts=4843.35)):

Hi. So I think for those of us who are kind of worried about this rise in corporate power and shareholder power, the two solutions I feel like we've heard today are kind of this revival or strengthening of antitrust or a removal of the kind of judicial interventions, I think as they were called in the last panel. And I'm wondering whether you all see these things either as opposing each other or working together, or if there's one or the other that you kind of would prefer to use to maybe tackle this issue. Or if you think kind of maybe Professor Miller, you think neither should be used at all.

Prof. Robert Miller ([01:21:25](https://www.rev.com/transcript-editor/shared/avdmKx9hibx-55aK1VgZ4T0u55NQ9s2138Tv2fVcERg5LdcIFx_UiNwQqubr5eFipwpsdn5nWW_QZPGMtGbYIXKJZKM?loadFrom=DocumentDeeplink&ts=4885.92)):

I'm happy to do any type of legitimate antitrust enforcement against monopolies. I'll go that far.

Hon. Gregory G. Katsas ([01:21:35](https://www.rev.com/transcript-editor/shared/MJo1nNPjCZY9Q5AT98YeXO8Oi7mjA7ll2MSRvo4U3IfzPaXYvhr6m41c5aTnzCkr2w4km8kNtnJwg8QsVwlydFXpS2M?loadFrom=DocumentDeeplink&ts=4895.13)):

Anybody else?

John Ehrett ([01:21:39](https://www.rev.com/transcript-editor/shared/4X5v4JhsNYRogdYLnnhtJVbVkR8g8hbBUYTOCG7Txmg7BpHlNyT42mTTtG150yO7qA8fwQbzu0ZZNQTjpyx-LK5G00w?loadFrom=DocumentDeeplink&ts=4899.33)):

I would just say the lack of antitrust enforcement has gone hand in hand with the expansive account of corporate power that something like Citizens United gives you. And I think that that in part reflects A), as I've said before, a set of value judgements about the fact that we want to demarcate this space as something that otherwise political concerns don't enter into. And I think the original intent of the antitrust laws themselves, or I should say the original meaning of the antitrust laws, is they're pretty broad. They say the government should get involved in these particular contexts to break up companies like this. And so to the extent that because we've wanted a particular kind of economy with a particular kind of corporate configuration, our doctrine has tended to evolve to reflect that. And our enforcement priorities have tended to evolve to reflect that. And maybe that's too legal realist for a FedSoc event, but I think that has been the institutional culture for a long time. And to the extent that we can raise questions about whether or not that's authentically originalist, that's worth asking

Eric Wessan ([01:22:34](https://www.rev.com/transcript-editor/shared/PimvS_SVvPxqZmYIVLlAxwGXm-18-AgY8ZQZhBHxByXP-zCPLn4UX9t1J_zxEKeWgSc3XeAmsbgyJoCiUPmfiCSH-PE?loadFrom=DocumentDeeplink&ts=4954.08)):

To go one step more legal realist than that--bringing cases and losing doesn't help anyone. So, I think for folks that are looking to have more robust antitrust, I would hope that the attorneys bringing those cases work really hard to make sure that they're winners.

Matt Stoller ([01:22:51](https://www.rev.com/transcript-editor/shared/v1YIyoV8LFkNAWEtKUY7-QFlAZCsQKsTNnlNppTFhu903JlJIY_2HKErO6RxSa2BiThjmPDIkhKu_B4H2lXC2Gvf5F8?loadFrom=DocumentDeeplink&ts=4971.81)):

I mean, one way to combine the two is to note that cases just take too long-- win or lose. I mean, the Trump administration brought the case against Google on search in 2020. It hasn't been decided yet. He brought one against Facebook. That's not even going to trial until I think next year maybe. I mean, that's crazy. This is not a way to enforce the law. I don't know how judges think about it, but there's no, if you can't, whatever you think about the philosophy of antitrust enforcement, if you can't get a resolution of a--for five, ten years on a monopoly, it's not really a functional--

Prof. Robert Miller ([01:23:35](https://www.rev.com/transcript-editor/shared/p-3Uld0_5vQuNz8fi9jsqIJAMNQ8l5z-Flff6zFBkfVATUAc5edcr61AYVKrfqxeEozWBImKY4PfHmg3OoxPWcNpYDE?loadFrom=DocumentDeeplink&ts=5015.5)):

--Sadly, slip and fall cases can take four years too.

Hon. Gregory G. Katsas ([01:23:39](https://www.rev.com/transcript-editor/shared/w8gWdbGtCpQ_y8ay_KqLg4gAiyV4GBjIOij9TMYQJpS8EnQZdmSdey7wxaWwLPWXav7_lBG3xlcdi00acp51Gjs82sI?loadFrom=DocumentDeeplink&ts=5019.22)):

Okay.

Matt Stoller ([01:23:39](https://www.rev.com/transcript-editor/shared/hhEun_lqIohDC9GgtZWDY-K6gInTJ3R2u5nnpPUyyy84nLWkwkTxro00HNbGvrF3E4_GJkgfpdMkIKo2O9LjrZRbFAA?loadFrom=DocumentDeeplink&ts=5019.61)):

Yeah.

Hon. Gregory G. Katsas ([01:23:40](https://www.rev.com/transcript-editor/shared/8NDu3zxFcdCYK1MOWfqLMBgxtuj3NDQ_Y3p4HEdpYsXwLZNrGvGqsNwJXQ-rYhpw_J8OCOYv-knfKePDPM4aorsxvj4?loadFrom=DocumentDeeplink&ts=5020.99)):

Next question on my left here.

Attendee #5 ([01:23:44](https://www.rev.com/transcript-editor/shared/j97jX5IzGPOKiaX1VEdi4iyUJlhf__0n7gJYAjuBanijKd31mn_pGmXf-BFS4g-0fLQxe3bnFY3TVuI7Ul5WSIWmjHw?loadFrom=DocumentDeeplink&ts=5024.2)):

Thank you. A real question that's being debated here is who will hold companies accountable? And obviously I'm referring here particularly to publicly traded companies. What is being neglected, I think for fundamental discussion here is the role of corporate governance. I do view corporate governance in the US as being extremely weak and would advocate much stronger structure of corporate governance in which the role of the chairman is seriously separated from the role of the chief executive. And it is the duty of the chairman to look at the way in which the company is behaving. And if he and the board are not satisfied with the conduct of the chief executive and his lack of accountability or her lack of accountability for proper oversight of the company, then that board and the chairman have the right and indeed the duty to sack the chief executive and any other senior managers responsible. So accountability, the first stage before you consider going to court should be the role of a really strong form of corporate governance.

Prof. Robert Miller ([01:25:06](https://www.rev.com/transcript-editor/shared/-UOE1NxDZt7LyH6UIB2F80HtyOmqqrt2REFS0g2WcA9eytVfITQFfmnALAoixmVErbyI9rJJwXE3ZunQWmjc4Eyae84?loadFrom=DocumentDeeplink&ts=5106.22)):

Boards do have the right to sack chief executives, and they occasionally do. I was just trying to look up statistics. I couldn't do it quickly enough, but there were a wave of shareholder proposals to separate chief executive and CEO positions or create an independent lead director position. I think we got that. It's just a question of the will to use it in appropriate cases. And we're probably more disagreeing about what the appropriate cases are than whether boards have authority to sack executives

Hon. Gregory G. Katsas ([01:25:42](https://www.rev.com/transcript-editor/shared/A_szoySPuVCK1qkn1HGR9EIlACJv_RW-k7KvyPlkE79R3cz_SQQx4TyI78g8RW0mWptn5mNNyyNwwCpHaePVY3J9UOY?loadFrom=DocumentDeeplink&ts=5142.52)):

Over here. Last two.

Attendee #6 ([01:25:45](https://www.rev.com/transcript-editor/shared/uMUepY8bQRs0R4s7W_nIX9pt_XvGTmEOiXJt2snn2JgrXiF4lpSQng2rys7KNgoW-ZkiyWBVGCfiXw6FGNKaWCurhpY?loadFrom=DocumentDeeplink&ts=5145.77)):

Most of the discussion here is too difficult for me, so I'm just going to circle back to Boeing for Mr. Stoller, and I'll start with a curse. May you always fly in Soviet-made aircraft. I didn't quite--

Matt Stoller ([01:26:06](https://www.rev.com/transcript-editor/shared/fQOF8nAuBDeKQGNXaGVy1rYcg-1LOgfcvrqrzEh6OpnqcoLLTHBOeiziWnCmRoDv6UPem4ADMdApJIuWGrPGLexmL5M?loadFrom=DocumentDeeplink&ts=5166.65)):

--That was mean.

Prof. Robert Miller ([01:26:09](https://www.rev.com/transcript-editor/shared/TExVbr9QO-GXEh7Rj7eUTK0wO37R6ytYyKHMwdCP_xUGzYWiVxRC0kWbi5vWT1csLJycJvuNWLSJ7Wo6Bq7vCrnyPEs?loadFrom=DocumentDeeplink&ts=5169.62)):

The guy's afraid to fly. Come on!

Attendee #6 ([01:26:12](https://www.rev.com/transcript-editor/shared/0agdIWY7BZHSv5Ylz0QQKIUFkXdh7BgTPynrm-KX_7VLXBeWqG8K7jtsSZTGe-6STsjkXnoyKwrJFJTk9xXgwzT0TzY?loadFrom=DocumentDeeplink&ts=5172.98)):

You were the one bringing it up! Is it really fair to say for Boeing that you're leaving the same people who created the problem there in charge of fixing the problem? A lot of people have gotten fired, and if those problems are not fixed and everyone is in favor of safe aircraft, more people will be fired. There'll be a whole new set of people in there running it. Now, this is the same thing that happens in the federal government except not enough--where you really don't see people fired when they have spectacular screw ups like 9/11 and endless numbers of other things. Was that, in terms of your creative solutions--I understand now you're thinking about antitrust. I think there are good reasons why there are only two major aircraft companies in the world, but were you thinking of any other creative solutions? I'd be interested in hearing things.

Matt Stoller ([01:27:10](https://www.rev.com/transcript-editor/shared/THCF19VMG4NVHX6Hbk4lG9KhPap7Do-LC6JSc2uiVKOJ1EN7Swbq6Qw-uV9iNlJnBAFkwVAq9XzNwv4zlDJBdIvEqNg?loadFrom=DocumentDeeplink&ts=5230.28)):

Yeah, I was just pointing at Boeing as the most obvious example of what Thorstein Veblen used to call absentee ownership, where no one's in charge. And I think that that's really, I wasn't trying to--I don't know how to fix Boeing-- but I was just trying to say that there is this, it's a very, we have placed limited expectations on ourselves as a society to be able to address, I think what our commonly agreed upon social problems. As you noted, everyone wants safe aircraft. I don't think anybody thinks there's been any move towards that. And that is the disjuncture I was trying to point to.

Hon. Gregory G. Katsas ([01:27:47](https://www.rev.com/transcript-editor/shared/bWmUuKzYdZ53z73sv57Lq_LTQYAEYP3Sp2x98Dt8FYFHOC7_nIL9HUDKh1bsdJMcUJ1RqnpUmqdC5DZKnPBkrcdZay4?loadFrom=DocumentDeeplink&ts=5267.3)):

Last but not least, Gene.

Eugene B. Meyer ([01:27:51](https://www.rev.com/transcript-editor/shared/MdWA7Ip6dpvemQwLE27eCVrArmkTuwD6UqLaaBbmo2BG078d2fPVZ0IBBZHVTRNu4ph34ske7-wxogCmRayqrAT9G7g?loadFrom=DocumentDeeplink&ts=5271.47)):

I had to be out during his presentation--of Professor Miller's presentation. But I wanted to find out if he would want to defend Citizens United because I haven't really heard any defense of it. And it's, while it's certainly a controversial decision, certainly seems like there's some pretty good arguments for it.

Prof. Robert Miller ([01:28:13](https://www.rev.com/transcript-editor/shared/_-jdJgq1PiM9pHoUgKYIwnCSuynwC4gCHhHYPwP0OU1q0tgmRrmFDUQJse8_Ec4Ho24qAWfRUOS-9bwiMaEsOhU7fNE?loadFrom=DocumentDeeplink&ts=5293.61)):

Oh, sure. I'm happy to defend Citizens United, right? I mean, what is Citizens United basically says? It says people with an economic interest and a public issue should be able to talk about it. Right. And I have absolutely no problem with that. Only on the contrary, I think it's a good thing. I am sorry to disagree with Matt. I don't think of corporations as being big governments. You know why the corporations differ from governments? They don't usually have monopolies. Only a few do, and they never have monopolies on force, and they don't have the subpoena power and they can't put you in jail. They don't have anything like the power of--corporations don't have anything like the power of a government. Governments are always more powerful than corporations, and I think that they're powerful enough to be able to be criticized by corporations and lobbied by corporations.

([01:29:08](https://www.rev.com/transcript-editor/shared/OuS_RQe0KPKAIQrIByj1Rsa6ffP5_HB23DzuQyhnmpkFLa1nwM00wehPzZrKM6s_UUSuctlmxhtf8j39CqwyFvMkdGk?loadFrom=DocumentDeeplink&ts=5348.49)):

If Citizens United were a disaster, then you might think that there must've been some great pullback in regulation since 2011 when corporations could finally start really lobbying for pullbacks and regulations. I didn't see that in any area I'm familiar with. I don't think it's happened at all. So, I am full- throatedly in favor of Citizens United, and I thank you, Gene, for the opportunity to let me emphasize it.

Hon. Gregory G. Katsas ([01:29:37](https://www.rev.com/transcript-editor/shared/lrRty02YkqT3TmPBvaLX5isJSL1eikZ-SHKd8FRZ7xcvcKN8IPQLI54yFJsfltSTc77COLf-w8hYMM9-u6jSfYT57OA?loadFrom=DocumentDeeplink&ts=5377.35)):

We are out of time. So before I invite Alida to tell us where to go next, please join me in thanking our panelists for an excellent presentation.

Alida Kass ([01:29:53](https://www.rev.com/transcript-editor/shared/XfAcB2sEo2WgSWuZuazcr_y00UtXY1roTMsKSz5ROJbz6bpgPhy0k9fjq27ove2vYg5CEpHKr1H4X33s2gxnyZo3CgY?loadFrom=DocumentDeeplink&ts=5393.01)):

Thank you, Judge Katsas, and I agree, a fantastic panel, fantastic conversation. We now have 15 minutes to make our way to the luncheon in the Palm Court. For those who have specifically registered for the luncheon and confirmed and paid for it, it is a sold out event, so please, please only make your way there if you're registered for it. That will begin our conversation--for those live streaming, that will be our fireside chat with Judge Paul Matey interviewing new FTC Commissioner Andrew Ferguson. That'll start at 12:30. We will resume back in this room at two o'clock for the third panel of the day. Thank you so much.