

God, and the word was God." <sup>n101</sup> Christians often refer to Jesus as the embodied "Word" of God. <sup>n102</sup> To philo [\*225] sopers, invocation of the term "word" invites reflection on its ancient etymology in the term logos, which is also a synonym for "reason." <sup>n103</sup> When attesting to the credibility, skillfulness, or character of another, we put in "a word" for them (if we are delivering a negative report about someone, we do not call it putting in a "word"). <sup>n104</sup> "Word" is used in urban slang to express agreement, concurrence, and affirmation. <sup>n105</sup> Because it is infused with so much meaning to so many different constituents, Jensen's integrity discourse norm can help corporate boards develop governance dynamics which are responsive to the wide-ranging interests of multiple constituents. <sup>n105</sup>

### C. The Constitutionality of Prescriptive Discourse Norms in Corporate Governance Law

This prescriptive discourse norms project attempts to grapple with the problems of corporate speech without resorting to the blunt instruments of censorship that the Supreme Court has forbidden. <sup>n107</sup> Instead of imposing external restrictions on corporate commercial or political speech, this approach instead focuses on altering internal corporate governance dynamics in a way that is likely to generate more socially useful corporate speech.

Moving from shareholder primacy to multi-stakeholder corporate governance attempts to change the way that corporations speak internally about and externally to corporate stakeholders. Regarding internal corporate dynamics, changing the fiduciary obligations of direc [\*226] tors of publicly traded corporations, and altering corporate discourse norms as a way of enforcing those obligations, does not run afoul of any First Amendment restrictions. Nobody has suggested that *Smith v. Van Gorkom*, <sup>n108</sup> which requires directors of Delaware corporations to engage in informed, good-faith discourse about what kind of corporate conduct is in the shareholder's best interests, is an unconstitutional standard on First Amendment grounds. Nor has it been suggested that *Van Gorkom*, and nothing else, is a constitutionally required standard for corporate speech. If prescriptive discourse would be unconstitutional, then the current regime, which is highly prescriptive on its own terms, is unconstitutional.

From the perspective developed by this Article, enforcing a fiduciary standard on external corporate speech to multiple stakeholders should not necessarily present First Amendment problems either. Presently corporations must adhere to fiduciary norms when speaking to shareholders. <sup>n109</sup> This standard has not been criticized on First Amendment grounds because it has been assumed that the fiduciary discourse standard is part of the private contractual obligation between shareholders and their firms, rather than an externally imposed government regulation. <sup>n110</sup> I have argued that the relatively more lax discourse standards that presently govern corporate speech to non-shareholders should also be seen as an implicit term in the corporate "nexus-of-contracts." Altering that default term to provide for a fidu [\*227] ciary discourse standard for corporate speech to workers and consumers should thus present no more daunting a First Amendment problem than does corporate law's present embrace of such a standard for corporate speech to shareholders. This article does not advocate banning shareholder primacy corporations or the non-fiduciary speech that such firms might speak to workers or consumers. Instead, it advocates setting the off-the-rack default terms for corporate charters in such a manner

For internal use only