

**HIGHLIGHT:**

## Abstract

This Article analyzes corporate speech problems through the framework of corporate law. The focus here is on the "discourse norms" that regulate corporate speech to various corporate stakeholders, including shareholders, workers, and consumers. I argue that these "discourse norms" should be understood as default terms in the "nexus-of-contracts" that comprises the corporation. Having reviewed the failure of corporate law as it bears on the interests of non-shareholding stakeholders such as workers and consumers, I urge the adoption of prescriptive discourse norms as an approach to reforming corporate governance in a socially useful manner.

"Truth is mighty and will prevail. There is nothing the matter with this, except that it ain't so." <sup>n1</sup>

- Mark Twain

"I have heard it broached that orders should be given in great new ships by electric telegraph. I admire machinery as much as any man, and am as thankful to it as any man can be for what it does for us. But it will never be a substitute for the face of a man, with his soul in it, encouraging another man to be brave and true. Never try it for that. It will break down like a straw." <sup>n2</sup>

- Charles Dickens

"It is only the Board that this in the end can come from." <sup>n3</sup>

-Michael Jensen

**TEXT:**

**[\*191]**

## INTRODUCTION

The destructive influence of corporate speech can be seen in many public policy problems. Examples abound, but are highly salient in the area of public health. The tobacco epidemic of the twentieth century, the obesity epidemic's ravages so far this century, massive environmental degradation-these problems and more have been catalyzed by the combination of corporate political speech in the regulatory arena, and corporate commercial speech in the marketplace. <sup>n4</sup> Solutions to the problem of corporate speech have long been wanting. Recently, the United States Supreme Court held in *Citizens United v. Federal Election Commission* that corporate political speech cannot be muzzled by government regulation. <sup>n5</sup> Since the 1970s the Supreme Court has also given substantial constitutional protection to commercial speech, and there is little reason to expect a reversal of this orientation on the Court. <sup>n6</sup>

Of course, in addition to its destructive power, corporate speech has also contributed to human flourishing. For example, commercial speech was instrumental in circulating information about the availability and use of birth control, which many scholars argue has

For internal use only