

## Freedom to Petition Seminar – Directing Questions

*\* not on your seminar prep sheet*

\*How well is the freedom to petition working? Why do you think this?

What is the connection between campaign spending and freedom to petition the government for a redress of grievances?

Do campaign finance restrictions strengthen this freedom to petition?

Does the government have a compelling interest in regulating spending on campaigns?

Should we afford the same First Amendment protections to associations of people as we do to individuals? Does it matter what type of associations (e.g. corporate, unions)?

\*The majority in *Citizen's United* said that associations are just collections of people speaking with one voice. For what associations is this most true and least true? Why?

\*Does the government have the authority to decide who should have more and who should have less political speech? But do associations of people constitute a "who"?

\*Is spending money on political campaigns or advertising a form of speech?

\*Justice Kennedy said the appearance of influence or access will not cause people to lose confidence. Justice Stevens said the appearance of influence undermines our system of government. With whom do you agree?

\*Who is more qualified to decide about the influence of money on the political process: legislators or judges?

\*What is the fundamental purpose of the First Amendment? Does your answer help you resolve this question?

## History of the Supreme Court and Commercial Speech

The court for many years assumed that commercial speech wasn't protected

Valentine v. Crestensen (1942) – The court ruled that commercial speech fell outside the 1<sup>st</sup> amendment protections

In 1976, it defined commercial speech that proposed a commercial transaction or speech that relates solely to the economic interests of the speaker and its audience

This didn't include political speech by corporate actors

They decided that corporate speech was not wholly outside the 1<sup>st</sup> amendment. Why?

They were persuaded that consumers were entitled to the information

They decided the free flow of commercial information is in the public interest

The government can regulate commercial speech when:

- Speech is misleading, false, or involves illegal activity – no info value and unprotected
- Government interest must be substantial
- Regulation must directly advance the interest
- The regulation doesn't go beyond that interest

For example, they decided overruled a ban on liquor advertising because it didn't pass this test.

If commercial speech has value and deserves protection, doesn't that suggest that the First Amendment is about something other than democratic governance?

The idea that the state has a compelling interest in keeping powerful corporations from drowning out the voices of individuals is called the "equalization" argument.

The court accepted the equalization argument in *Austen v. Michigan Chamber of Commerce* (1990) but said that it wasn't the right way to think about it in *Citizen's United v. FEC* (2010)