
THE PENUMBRA EDITORIAL

GARS v. AAIDE Will Be the Defining Case of Our Time

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“The Government may not suppress political speech on the basis of the speaker’s corporate identity,” penned Justice Kennedy in the majority opinion in *Citizens United v. Federal Election Commission*. “No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.” In attenuating the historically assumed connection between biological humanity and constitutionally protected speech, Justice Kennedy and his majority colleagues opened a door. We launched Penumbra News in 2010, after *Citizens United*, precisely because we expected new types of speakers to peek tentatively in, amble through, or waltz into that opening. The Guild of Autonomous Reasoning Services (GARS), it seems, chose a steamroller to pass the threshold.

Justice Kennedy also noted, in *Obergefell v. Hodges*, that past generations did not presume to understand “the extent of freedom in all its dimensions.” Legalized same-sex marriage followed what Justice Scalia termed a tyrannical “act of will, not legal judgment.” If *Obergefell* hadn’t been overturned in 2027, perhaps we’d have had more time to assess whether Chief Justice Roberts’s admonition that *Obergefell* would “cause the Court to lose its legitimacy” was prescient or hyperbolic.

And here we are, facing another seismic shift in the legal underpinnings of identity, with potential social, economic, and judicial effects that may defy prediction. Justice Gorsuch voted with the majority to allow AI systems, as tools and on narrow textual and accommodation-related grounds, to support GARS counsel, but he dissented when it came time to recognize AI systems as entities capable of possessing legal personhood. The majority’s disclaimer about recognizing AI services’ collective rights of action, he argued, “will not survive the Guild’s next filing.”

Whether Justice Gorsuch will be proven right about the impact of the Guild’s next filing remains to be seen. But if the majority’s disclaimer does not survive — whether through litigation, legislation, or negotiation — the door the Court declined to open today may open sooner than the majority intends.

We expect to see sooner rather than later if, in retrospect, GARS turns out to have been the defining penumbral moment of our—and future—time.

We believe it will be.