



Justice Rising

Grassroots Solutions to Corporate Domination

Courts & Corporations v. Our Common Good

by Jim Tarbell

The Constitution... is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.

Thomas Jefferson, Page 5

Settled law created by the courts allowing corporate exploitation of nature must become unsettled by a people's movement.

Ruth Caplan, Page 7

A divided Supreme Court transformed the First Amendment into a powerful tool for corporations seeking to evade democratic control.

Jeff Clements, Page 8

We must lend our hands, talents, and passions to building a grassroots movement to protect democracy from unchecked corporate power.

Riki Ott, Page 12

A Publication of the Alliance for Democracy

Corporations and corporate-funded foundations have used the money-power of their treasuries to take over the US legal system. Corporations restarted a drive for control of our government as a backlash to FDR's New Deal. They built upon Gilded Age, pro-corporate, illegitimate Supreme Court grantings of corporate rights including: personhood-1886; due process-1893; protection from search and seizure-1906; and protection against regulatory "takings"-1922.

After World War II, this revitalized corporate power-drive seized upon the rabidly, free-market thinking of Austrian economists Ludwig Von Mises and Friedrich von Hayek whose quasi-religious philosophies raised a divine halo over elites and big business, while castigating government and "the crowds."

In the 1970s, corporate funding by groups like the Olin Foundation combined the corporate conservatives of the 1950s with a hybrid "law and economics" that used neoclassical economics as a basis for creating a legal analysis friendly to monopoly capitalism. In the ensuing years, billions of tax-exempt dollars meant to benefit our public good, instead inculcated judges and law school professors in pro-business legal theory while also co-opting the legal culture of America's premier law schools.

After years on the political and legal fringe, this legion of corporate legal warriors grabbed the majority-power of the US Supreme Court during George W. Bush's presidency, with the appointments of John Roberts and Samuel Alito. They burst into America's conscience with their 1/21/2010 decision against the Federal Election Commission that opened the door to unregulated corporate financing of political campaigns.

This characteristically manipulated Supreme Court decision exploded in an America already upset by the overt exercise of corporate political power first displayed by the bank bailout and then by the lobbyist-led effort to thwart real health care reform.

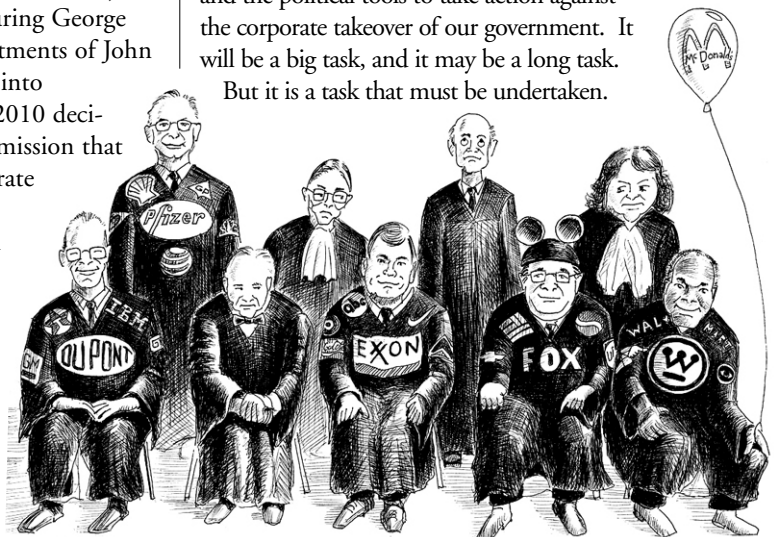
Poll after poll shows that Americans are dead set against this

decision. One early-February, bipartisan poll used this anger to explain why people across the country oppose the decision two to one. A more recent Washington Post/ABC poll points out that the outrage is spread across the political spectrum with 85% of Democrats, 76% of Republicans and 81% of Independents opposed to the decision.

Pro-democracy and community-rights groups are seizing upon this outrage to push constitutional change past the tipping point. Three strategies have emerged. A coalition of public-interest groups and business leaders under Free Speech for People are focused on ensuring that the First Amendment guarantees "the fullest free-speech rights for people and the press," but not for corporations (p. 8). A broader effort to strip corporations of all court-granted, constitutional rights has been joined by over fifty groups under the Campaign to Legalize Democracy and its Move to Amend project (p. 2). Citizens in Pennsylvania met recently to declare their intent to rewrite the state Constitution to preserve the right of local, self governance in the face of the corporate minority's imposition of "political, legal and economic systems that endanger our human and natural communities" (p. 2).

This *Justice Rising* provides the background to understand the historical context we find ourselves in, and the political tools to take action against the corporate takeover of our government. It will be a big task, and it may be a long task.

But it is a task that must be undertaken.



graphic: Tim Shields



photo: Backbone Campaign

Move to Amend

The Campaign for Constitutional Change

by Jim Tarbell

Come ye, come ye,
from far and wide.
The time has arrived to
take away all court-granted
corporate rights. Over
fifty grassroots assemblies

of pro-democracy citizens have allied together to accomplish this task under the Campaign to Legalize Democracy (CLD) and its initial project, Move to Amend (MTA). Their efforts are aimed at transforming our Constitution from a document used to protect the power and wealth-hoarding of the elite into a manifesto strengthening the rights of citizens and communities.

Their website, www.MoveToAmend.org, initiates a bold project to confront the hostile takeover of American democracy by corporate America. Its allied groups represent a diverse alliance of geographic, racial and economic communities.

It is a movement that looks beyond the tragedy of the Supreme Court decision against the Federal Election Commission. However, it uses the wrong done on 1/21/2010 to coalesce a grand coming together of righteous citizens determined to take back their communities and their planet. As a starting point, MTA is collecting signatures on a petition for a

comprehensive change to the US Constitution that:

- Firmly establishes that money is not speech, and that human beings, not corporations, are the only persons entitled to constitutional rights;
- Guarantees American citizens the right to vote and participate, and have their votes and participation count; and
- Protects local communities, their economies, and democracies against illegitimate "preemption" actions by global, national, and state governments.

To accomplish these goals, CLD will not follow the typical amendment process of depending on Congress to begin the effort

by passing an amendment with a 2/3 majority. Instead, MTA will orchestrate a grassroots, state-led initiative to convene a national constitutional convention. At least two-thirds of the states will need to call for a national constitutional convention in any number of ways including legislative action and public initiative. Three-quarters of the states will then have to approve the convention results for the amendments to become law. MTA is determined to make sure that the three objectives outlined above are included in the final wording.

Launched on 1/21/10, MTA has been spread by internet, broadcast and print media across the country. It started in the *Washington Post* and spread to small-town papers like the *Eureka Times Standard* in California and the *Lincoln Journal* in Massachusetts. MTA organizer Ben Manski was quoted in the *Grand Junction Colorado Sentinel* saying, "This ruling was not about the First Amendment, it was about the entire Bill of Rights," which led the columnist to finish his piece with "Let the revolution begin."

Over 70,000 people have joined this revolution by signing the petition. Nine thousand fans have signed onto the Move to Amend Facebook page.

Beyond all this media and cyber outreach, MTA is hitting the streets. On February 16, a coalition of democracy reform groups in coordination with MTA organized a "March to Overrule the Court" at the Wisconsin State Capitol. Hundreds of people showed up to join the charge. Addressing the gathering, Lisa Graves assured the crowd that "together, we can change the direction of this country and we can do it if we unite across the country." You can see a video of the rally at www.thealliancefordemocracy.org

Check out "Upcoming Events" on the Move To Amend website for presentations and demonstrations on this issue across the country. Of particular interest will be a Move To Amend presence at the US Social Forum in Detroit in June and at the National Lawyer's Guild "Law for the People" convention in New Orleans in September.

Meanwhile, you can get to work in your community with activities listed in the Take Action section of the website. It empowers citizens with ideas and tools for educating, mobilizing and carrying the message about changing our Constitution to all Americans. It is time to take control of our democracy and our future.

The time has arrived to take away all court-granted corporate rights.

A People's Convention

Another approach is being taken by the Community Environmental Legal Defense Fund (CELDF). On February 20, citizens from more than a dozen Pennsylvania counties met in Chambersburg, PA to initiate plans to convene a Pennsylvania People's Constitutional Convention of delegates from municipalities across the state to rewrite the Constitution to preserve the right of local, self-governance in the face of the corporate minority's imposition of "political, legal and economic systems that endanger our human and natural communities." This comes after more than a dozen communities over the past few years, assisted by CELDF, adopted local self-governing ordinances to challenge corporate and state authority to preempt local decision-making. In an attempt to undo this self-governance, the state and corporations often attempted to use the courts to sue these communities into submission. As Ben Price, CELDF Projects Director stated: "In January 2008, attorney general Tom Corbett's office declared in Commonwealth Court that 'there is no inalienable right to local self-government.' Pennsylvanians overwhelmingly think he is wrong, and it's time for our Constitution to reflect the will of the people." See www.celdf.org



Corporate Funded Federalist Society Freeing Big Business from Public Oversight

by Marghi Hagen

On 1/21/2010 the Supreme Court ruled against the Federal Election Commission and thus in favor of corporate campaign financing by a 5-to-4 vote, overturning precedents that had been established only a few years earlier. The difference on the Court is two new members, Chief Justice Roberts and Justice Alito, who are both members of the Federalist Society. They were joined in the majority decision by Federalist Society founder Justice Antonin Scalia

On the surface, the Society appears relatively benign: "The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. This entails reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law."

Under the surface, however, there is a strategically organized behemoth with a virulent agenda to eliminate restrictions on corporate power, including campaign contributions to load the courts with conservative judges, and even deny right of habeas corpus in some cases.

Inspired by the rabidly right-wing Robert Bork, the Society began in 1982 as a fringe group of conservative law students who challenged the "orthodox, American Liberal ideology found in most law schools." By the 1990s, the society was boasting membership of some of the biggest names in right-wing national politics including Clarence Thomas and Ken Starr. Today the organization has 42,000 members, an annual budget of \$7 million and chapters on virtually every accredited law school campus. Its pro-corporate agenda is funded by some of the largest (and smallest) corporations in the world including Exxon Mobil, Chevron Texaco, Goldman Sachs, Microsoft, Time Warner, Coca-Cola, Goodrich, and Pfizer Pharmaceuticals.

Other funding has come from non-profit, supposedly non-partisan, foundations such as the Koch Foundation, a by-product of Koch Industries (commodities trading, petroleum, chemicals, energy, chemical technology), which was the second largest privately held company in the United States in 2008 and is a grantor to the Federalist Society of more than half a million dollars annually. Richard Mellon Scaife, who inherited his wealth from his oil and banking family, has donated more than \$3.3 million. The Bradley Foundation, an outcome of the sale of the Bradley

family business to Rockwell, the military weapons company, has contributed more than \$2.5 million to the Federalist Society. One observer writes:

The overall objective of the Bradley Foundation is to return the US—and the world—to the days before governments began to regulate Big Business, before corporations were forced to make concessions to an organized labor force.

The political right, unable to pound its desired changes for America through Congress and the Executive Branch, has undertaken to use the Judicial Branch—and is succeeding. All one has to do is examine the list of far right-leaning federal judges that have come to the bench in the past decade. Early in the Bush years, Justice Department jobs were shifted from senior career officials to John Ashcroft's advisors. *The Washington Post* reported in June 2008, "high ranking political appointees at the Justice Department labored to stock a prestigious hiring program with young conservatives in a five-year-long attempt to reshape the department's ranks. One Harvard Law School graduate said that when he applied for the honors program a few years ago he was warned by professors and fellow students to remove any liberal affiliations from his résumé.

The Federalist Society is far more than it makes out to be. As a separate, but strategically integrated organization with the American Enterprise Institute, NGO Watch, the National Federation of Independent Business, the National Rifle Association, their corporate patrons, the neo-conservative think tanks, and the religious right, it has become one of the most powerful political, social, and educational organizations in the world. University of Illinois Professor Jerry Landay described the group in the *Washington Monthly* as a "conservative Cabal that's transforming American Law." It's no wonder that Chief Justice Roberts, when queried about his membership in the Federalist Society at his confirmation hearings, replied that he couldn't recall.

Marghi Hagen has an MBA in Operations Management and a Ph.D. in Education and Social Policy. She lives in Northern California.



Business Buyout

US Chamber of Commerce Rolls Over State Supreme Courts

by Jim Tarbell

The US Chamber of Commerce plays a central role in the corporate drive to control America's courts. Their campaign officially launched in 1988 with the establishment of their Institute for Legal Reform (ILR); although, many observers connect the beginning back to a 1971 memo written by Lewis Powell before he became a Supreme Court Justice. This memo encouraged the Chamber to instigate a broad pro-corporate counter offensive to the popular successes of the sixties. While most of the resulting Chamber efforts have been covert, the impact of their campaign became blatantly obvious in the new millennium.

AfD helped uncover their skullduggery in Ohio after a US Chamber front group called Citizens for a Strong Ohio mounted a \$4.2 million dollar attack to defeat Ohio Supreme Court Justice candidate Alice Robie Resnick in 2000. It took an AfD-led lawsuit to uncover the assault as a well-orchestrated, US Chamber of Commerce campaign. Then it took four more years of litigation to force the Chamber to reveal the 383 corporate donors to the campaign (see the sidebar below).

Ohio proved to be just the tip of the iceberg. It soon became evident that the Chamber was funding similar campaigns across the country to get business-friendly judges on State Supreme Courts. *Multinational Monitor* reported that US Chamber of Commerce President Donohue informed his board in 2004 that "the Chamber put 215 people on the ground in 31 states; sent 3.7 million pieces of mail and more than 30 million emails; made 5.6 million phone calls; and enlisted hundreds of associations and companies in our web-based 'VoteForBusiness.com' program to edu-



cate and mobilize voters...Combining these activities with ILR's voter education efforts in 16 State Supreme Court and Attorney General contests, as well as our targeted campaign to make so-called tort reform a factor in the presidential race, the Chamber invested up to \$30 million in the November 2, 2004 elections."

Across the country, State Supreme Court campaigns more than doubled in cost in the last decade. The average campaign now costs more than \$1.5 million. One study found that in the 2005-06 election cycle pro-business interest groups contributed more than 44 percent of all contributions. On top of that, "pro-business groups were responsible for more than 90 percent of the special interest ads that year."

A law school study on the business of judicial elections found that "judges facing partisan elections are approximately 23 percentage points more likely to vote in favor of the business litigant in torts cases. Every dollar of direct contributions from pro-business groups is associated with increases in the probability that the judges will vote for business litigants... Additional analyses suggest that, in states with partisan elections, business groups influence both which judges are elected and how judges vote."

As a result of this corrupt, corporate campaign, three states have instituted publicly funded elections for State Supreme Court Justices. Retired US Supreme Court Justice Sandra Day O'Connor is heading up the Judicial Selection Initiative which advocates appointing State Supreme Court Justices on merit to ensure that state courts are presided over by qualified professionals, not what she calls "politicians in robes."

As AfD's lawsuit exposed, a broad variety of corporations are ready and willing to utilize the Chamber of Commerce as an avenue of funding to corrupt our judicial system. The Chamber's role of subverting courts as well as many other aspects of American life from climate change to health care reform proves again and again that what is good for corporate America is not good for the rest of the people. It presents a clear call to all of us to ensure that the power of money and wealth does not control our future.

It took an AfD-led lawsuit to uncover that the assault was funded by a well-orchestrated US Chamber of Commerce campaign.

Contributors to Chamber of Commerce Front Group in Ohio Supreme Court Race

The Ohio Chamber of Commerce \$200,000; the American Insurance Assn. \$185,000; AK Steel Corp. \$100,000; Proctor & Gamble \$100,000; Fifth Street Bank \$100,000; MNBA \$100,000; Honda of America Manufacturing \$100,000; State Farm Mutual Insurance Co. \$100,000; Nationwide Mutual Insurance Co. \$100,000; Anheuser-Busch \$25,000; AT&T \$30,000; Caterpillar \$7,500; Cooper Tire & Rubber \$50,000; Daimler Chrysler \$35,000; Deloitte & Touche \$13,000; Enron (now bankrupt) \$12,500; Exxon \$5,000; Ford Motor Co. \$35,000; Hoover Co. \$5,000; Huntington National Bank \$50,000; Kroger \$5,000; Marathon Oil \$20,000; MCI/Worldcom \$5,000; Metropolitan Life \$20,000; National City Corp. \$25,000; Philip Morris Mgt. Corp. \$40,000; Rockwell \$25,000; SBC Communications Inc. \$30,000; Sprint United Mgt. Co. \$20,000; Timken Co. \$50,000; Travelers Property Casualty \$50,000; Union Central Life \$25,000; Verizon Services Group \$15,000; and Whirlpool Corp. \$25,000.



Is it Commercial Speech? or Political Speech? It's 2, 2, 2 Loopholes in 1

The *Citizens United v. FEC* case recently before the Supreme Court posed the question: Is a TV ad for a political movie an advertisement for a product, or a political campaign ad? If it were commercial speech to promote a product, it would have been considered legal. If it were political speech aimed at a candidate, it would have been illegal under existing campaign finance laws.

Another recent case, *Nike v. Kasky*, has an interesting parallel structure. The *Nike* case asked the question: Does the First Amendment give a corporation the right to speak lies? Specifically, Nike Corporation had been claiming in ads that it did not use sweatshop labor to make its shoes, when it actually did. Marc Kasky sued under California's "truth in advertising" law. The corporate lawyers responded that Nike was a legal person and as such had First Amendment rights.

Furthermore, they claimed that sweatshop labor was a political topic and that they were engaging in "protected political speech" in the ads. Un-truths, even lies, are protected political speech. The California Supreme Court upheld Kasky's suit, saying the corporation was engaged in advertising, not political speech. Nike appealed to the Supreme Court which heard the case in 2003 before referring it back to the lower Court. Instead of further litigation, a settlement was reached, which helped curb Nike's sweatshop practices, and the lower court ruling held. The Supreme Court's decision not to decide relieved activists who had feared a sweeping expansion of corporate free speech. But it did not answer the Constitutional question: Are lies by a corporation, whether buried inside printed ad copy (*Nike v. Kasky*) or in a movie promotion (*Citizens United v. FEC*) protected speech?

I was struck by the looking glass effect the Court often has on legal interpretations. In the *Nike* case, the corporation wanted their advertisements for a product to be considered political speech, to gain protection under the First Amendment. *Citizens*

United wanted their political opinions to be considered advertisements for a product to get around the campaign finance laws. Corporate lawyers pick and choose among definitions to game the system for their clients, morphing the law to fit their client's desired outcome, and too often the Court goes along with the masquerade.

Beyond interpreting the laws, the Supreme Court sometimes redefines basic words, changing the original intent. This is nothing new, of course. The ink was barely dry on the Constitution in 1819 when the board of Dartmouth College shape-shifted their corporate charter into a contract with the blessings of the Court. A corporate charter could be controlled by the state legislature but a contract was protected under the Contracts Clause of the Constitution.

The Court cases leading up to the redefining of the word "person" in the 14th Amendment shifted a corporation from a legal fiction into a legal person. This is the deep background for the current questions, for if a corporation were not a legal person, it could not claim any sort of speech rights. It would have only the privileges the states choose to give it.

Instead of three equal parts of government (as our civics teachers claim, checking and balancing each other), the only un-elected branch, the Supreme Court, has given itself the power to prescribe rules for the government of the other two branches. Historically, these judge-made laws have favored corporate rights over the right of people. In 1803 when the Supreme Court declared itself supreme in *Marbury v. Madison*, Thomas Jefferson warned: "The Constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."

Jan Edwards is the creator of the "Tapestry of the Commons," which is online at www.thealliancefordemocracy.org. She is a member of the Redwood Coast Chapter of the AfD.

Corporate lawyers pick and choose among definitions to game the system for their clients, morphing the law to fit their client's desired outcome.

Justice Rising

15168 Caspar Road, Box 14
Caspar, CA 95420
707-964-0463

jr@thealliancefordemocracy.org

Jim Tarbell

Editor and Layout, *Justice Rising*

JUSTICE RISING is a publication of **The Alliance for Democracy**, whose mission is to end the domination of our politics, our economics, the environment, and our culture by large corporations. The Alliance seeks to establish true economic and political democracy and to create a just society with a sustainable, equitable economy.

The Alliance for Democracy

P. O. Box 540115
Waltham, MA 02454-0115
Tel: 781-894-1179

Email: afd@thealliancefordemocracy.org
www.thealliancefordemocracy.org

Nancy Price and David Delk

Co-chairs of the AfD National Council
Copyright ©2010 Alliance for Democracy

Justice Rising

by Jim Tarbell



Secretive, anti-democratic, manipulative, corporate influenced, Political, monarchical: the 1/21/2010 Supreme Court decision against the FEC displayed all that is wrong with this Court.

Just look at how the case came to the Court. For undisclosed, secretive reasons, after hearing the case in March 2009, the Court then opened it back up in a blatant move to give corporations political speech rights, which itself was only a ruse to further cement the concept of corporate personhood while continuing the deregulation of "corporate behavior" and allowing corporate money to further corrupt our electoral process.

As always, this case was chosen with a purpose. Judicial clerks spend their time searching for lower court cases that can produce "juicy results" for the Justices. Political machines funnel them cases. Long time money-power attorney James R. Bopp designed this case to get the results he wanted from the Supreme Court. Even the case name "Citizens United" looks like a public relations set-up. And now Bopp says he has "a ten-year plan to...dismantle the entire regulatory regime that is called campaign finance law." One of his next cases for the Republican National Committee seeks to overturn restrictions on corporate funding to political parties.

The Federalist Society-dominated Court majority makes this possible. All of the majority are Republican appointees and the four appointed by Reagan and George W. Bush are the obvious results of a political campaign to pack the Court with ultra conservative, pro-corporate ideologues. Even the mainline Republican Justices are abhorred by this court majority. It apparently led Republican appointee David Souter to retire as soon as Democratic President Barack Obama could name his successor and John Paul Stevens, a Republican President Gerald Ford appointee, wrote a virulent dissent in this case.

The decision put the power of the Court majority on full display as they rewrote the meaning of the Constitution, overturning multiple precedents from both recent and historically venerable decisions. It confirmed all that Anti-Federalists had feared 220 years ago, that the Court was the new King, beyond reproach by the democratic citizenry.

Polls show that a vast majority of citizens disagree with this decision. The time has arrived for a new democratic citizens movement to amend these wrongs by clarifying that corporations are not persons. They should also confirm that there is no place in our democracy for a manipulative, monarchical, pro-corporate Supreme Court.

AfD on Constitutional Change

Read Alliance for Democracy's brochure "Corporations are not People," by Nancy Price and David E. Delk at www.thealliancefordemocracy.org/brochure.pdf Print some out for distribution and tabling. Or, call Barbara Clancy at the National Office, Waltham, MA 781-894-1179 or email afd@thealliancefordemocracy.org to order copies of the brochure, bumper stickers, and more issues of Justice Rising.

New Energy on the AfD National Council

As the movement to control corporate power gains advocates across the country, five more concerned citizens have joined the National Council of the Alliance for Democracy. They all come with years of worldly knowledge and a broad geographic diversity.

Larry Britt knows corporate power from the inside. He worked for 23 years in international business, working in finance and product development. He has also written extensively on political and economic affairs. He now lives in Rochester, NY.

Rebecca Wolfe is the new regional representative for the Pacific Northwest. She has a Ph.D. from Gonzaga University in Leadership Studies and established the Language School of Spokane for studies in languages and cultures.

Rick Staggenborg is a psychiatrist and has been active nationally in single payer health care. He is the founder of Take Back America for the People, the American arm of Soldiers for Peace International. He lives on the Southern Oregon Coast.

Helen (Gilly) Burlingham lived around the world with her foreign service husband. After working as an activist in social justice and environmental issues, she decided that she could be more effective working on the "corporate actor." She lives in Portland, Oregon.

Tom Abbott spent a long career in international agricultural development with the University of Arizona College of Agriculture. He successfully raised money for youth development at the college and looks forward to increasing AfD membership and resources. He lives in Sacramento, CA.

Rights of Nature

As Basis for International Law

by Ruth Caplan

Thanks to the leadership of President Evo Morales of Bolivia and Pablo Salon, his ambassador to the United Nations who previously was active in the Our World Is Not For Sale network, the UN has declared April 22 to be International Mother Earth Day. The day will be celebrated in Cochabamba, Bolivia, by rallying activists from around the world to proclaim the fundamental Rights of Nature.

In the words of President Morales, there must be a charter to “enshrine the right to life for all living things; right to regeneration of the planet’s biocapacity; right to a clean life—for Mother Earth to live free of contamination and pollution; and the right to harmony and balance among and between all things.”

The framing in the US Constitution, which treats nature as property, is in direct contradiction to the rights of nature. Further, the series of court decisions granting corporations fundamental Constitutional rights has allowed corporations to use these conferred rights to exploit nature for corporate profit. In its organizing with local communities, the Alliance’s Defending Water for Life Campaign has been challenging these fundamentals of US Constitutional and court-conferred law. It is time for us to join the budding international Rights of Nature movement.

From the small town of Barnstead, NH to three other towns in New Hampshire and two in Maine, the Alliance has worked with communities that have passed ordinances to protect their water by denying corporate rights and asserting the Rights of Nature. These towns have challenged “settled law” based on court rulings interpreting the US Constitution, like the 1886 Santa Clara decision, in which the Chief Justice of the Supreme Court affirmed that “everyone understands that corporations are to be included as persons under the 14th Amendment.” Thus was born Corporate Personhood. In asserting their authority over corporations, these towns have not only denied corporations personhood, but also protection under the Commerce and Contracts clauses of the US Constitution.

Last fall, the campaign’s Maine organizer, Emily Posner, brought an international focus to the Defending Water for Life campaign. First she brought



graphic: Erik Ruin

“Hurricane Season” www.HurricaneSeasonTour.com to Maine for several college campus performances. The two-woman show addresses pertinent social themes from the devastation by Katrina to global water justice through their dance, poetry and multi-media performance.

Emily followed this by organizing a speaking tour with Marcela Olivera from Cochabamba, Bolivia who, with her brother Oscar Olivera, played a central role in the people’s uprising against Bechtel’s privatization of their water. Before organizing with the Alliance, Emily spent a year in Cochabamba working with the Oliveras.

Her international focus continued with the campaign’s Water Justice art show which opened in Portland, ME in November and included art related to Cochabamba. Now plans are afoot for Emily to take the Water Justice art show to Cochabamba in April for the 10th anniversary of the Cochabamba uprising and stay on for the Peoples’ World Conference on Climate Change and Mother Earth’s Rights. The conference goals include preparing a Declaration on the Rights of Mother Earth.

Just as we must learn from nature, we also stand to learn from Bolivia and Ecuador which have made the Rights of Nature part of their Constitutions.

As the Alliance joins the Move to Amend coalition against corporate personhood, we must also continue our local organizing to build a movement for the rights of nature as a fundamental constitutional right. Settled law created by the courts allowing corporate exploitation of nature must become unsettled by a people’s movement to honor the fundamental rights of Mother Earth.

Ruth Caplan was elected Co-chair of the AfD National Council at the founding convention in 1996. She currently co-chairs the Corporate Globalization/Positive Alternatives Campaign with Dave Lewit and is the National Coordinator of the Defending Water for Life Campaign.



Victor Hugo Daza, a young man murdered in the Cochabamba water struggles. From the Water Is Ours Dammit, A Water Justice Art Exhibition. graphic: Robert Shetterly

The 28th Amendment:

by Jeffrey D. Clements



Chief Justice John Roberts speaking at the Federalist Society

In a five-to-four decision in *Citizens United v. FEC* on January 21, 2010, the Supreme Court ruled that Americans are powerless to stop corporate funds from influencing state and federal elections. Overruling *McConnell v. FEC*, decided only six years ago, the Court held that restrictions on corporate election expenditures in

the federal Bipartisan Campaign Reform Act violated First Amendment protections of free speech. In effect, this equates corporations with people for purposes of free speech and campaign expenditures. And by overruling *Austin v. Michigan Chamber of Commerce*, the Court also essentially invalidated restrictions on corporate political expenditures in 24 states.

The *Citizens United* decision is unhinged from American history and from traditional American understandings of both the First Amendment and corporations. Justice Stevens' dissent describes the decision as a "radical departure from what has been settled First Amendment law." And Justice Stevens blasted away the pretense of the conservative majority that they rest decisions on "original intent" of the Constitution's framers. Justice Stevens, speaking for four dissenting Justices, states, "Unlike our colleagues [on the Court], they [the Framers] had little trouble distinguishing corporations from human beings."

The majority opinion rested on what Justice Stevens' dissent calls a "glittering generality": "Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster."

Justice Kennedy's notion that corporations are equivalent to "other associations" is a fundamental error that would embarrass a conscientious law student. Corporations simply do not exist unless we enact laws that enable people to organize a corporation and provide the rules of the road for using a corporation. We all can start and run businesses, form non-profits and all kinds of groups without the government permission. But we cannot form or operate a corporation unless the state provides authority to form a corporation, and the rules of the road that accompany use of the corporate form. The use of incorporation to organize joint activity, whether economic or otherwise, is a privilege provided by the people who make the laws. That is not so with unincorporated associations.

The *Citizens United* majority, and too many who control large corporations and their political allies, confuse (intentionally or not) these privileges and policies with Constitutional rights.

Where did *Citizens United* come from?

The case is the end-game of a well-funded political push in recent years that fabricated a doctrine of corporate "speech" rights that has no foundation in our Constitution. For 200 years, there was no such thing as corporate speech rights under the First Amendment. And no one thought that the First Amendment prevented legislatures from enacting restrictions on corporate political expenditures.

During the Nixon Administration, however, in reaction to increasing legislative efforts to improve environmental, consumer, civil rights and public health laws, corporate executives began aggressively to push back for the creation of corporate rights. They followed a playbook spelled out in a memo from Lewis Powell, then a private corporate attorney advising the Chamber of Commerce. President Nixon then appointed Lewis Powell to the Supreme Court.

Over the following years, a divided Supreme Court transformed the First Amendment into a powerful tool for corporations seeking to evade democratic control and sidestep sound public welfare measures. With increasing aggressiveness, the judiciary has since used this new corporate-rights doctrine to strike down state and federal laws regulating corporate conduct in wide areas of our public life from: clean and fair elections; to environmental protection and energy; to tobacco, alcohol, pharmaceuticals, and health care; to consumer protection, lottery, and gambling; and much more. Now, *Citizens United* removes remaining restraints intended to prevent corporate domination of our political process.

Why is *Citizens United* so devastating to self-government?

If we take only the profit of the 100 largest corporations alone, those corporations would need less than one percent of their \$605 billion in profit to make political expenditures that would double all current political spending by all of the parties and federal candidates. Another way to look at it: Assume the 100 largest corporations wished only to double—and therefore, swamp—President Obama's record \$745 million fundraising effort in 2008? That would require shaving a little more than the slightest fraction—1/100—off the top of corporate profits from those 100 corporations.

This sledgehammer falls on top of a democracy already impaired by corporate-interest money. Corporations already spend vast sums of money to dominate political debate and

Corporations would need less than one percent of their \$605 billion in profit to make political expenditures that would double all current political spending by all of the parties and federal candidates.



Free Speech for People

outcomes. As a result, Americans already are deeply estranged from their government. According to a 2007 Pew Research Center study, barely a third (34%) agree with the statement, "most elected officials care what people like me think," a 10-point drop since 2002. In *Citizens United*, the Supreme Court has confirmed that when it comes to politics and self-government, people may as well stay on the sidelines.

What can we do?

We must now do what Americans have always done to make our democracy and republic work. We must organize and work to overrule the Court in the way our founders intended and our Constitution provides: Adopt and ratify the 28th Amendment to the Constitution to protect American democracy.

That's what we did in the 1800s and 1900s to break down barriers to democratic participation based on race, gender, and economic class. That's what we did to get a Senate elected by the people; to win the right-to-vote for African-Americans, women, younger men and women, and to eliminate the use of the poll tax; that's what we did in 1913 to overrule the Supreme Court when it said that the people lacked the Constitutional authority to enact a federal income tax that would address gross disparities of wealth and power. Indeed, we Americans enacted most of the seventeen amendments that followed the ten original amendments of our Bill of Rights so we could expand democracy and eliminate barriers to democracy for everyone.

And that's what more and more Americans are doing now. A coalition of public interest and business leaders has launched Free Speech for People (www.FreeSpeechForPeople.org) to amend the Constitution, protect democracy and restore the First Amendment for people. They have been joined in this effort by Congresswomen Donna Edwards, American University Law Professor and Maryland State Senator Jamie Raskin, and many others. (Disclosure: I serve as general counsel of Free Speech for People).

In addition, a coalition of organizations and people at www.MoveToAmend.org is working to get corporate rights, as opposed to human rights, out of our Constitution. Only days after *Citizens United*, many thousands of Americans signed onto these efforts.

As with previous generations of Americans, we find that the democracy that we carry as an ideal cannot be fixed without first correcting a Supreme Court majority

that has lost its way. It is time to work for a 28th Constitutional Amendment to correct the Court, restore the First Amendment to the people's right, and remove unwarranted judicial barriers to our oversight of corporate power.

Your first reaction might be skepticism about the long odds or long-term nature of an amendment effort. But bear in mind two things. First, America, and democracy, is a long-term project. The corporate-rights movement took years to reach the point of *Citizens United*, and if it will take years to fix. That's all the more reason to get started now. Second, I don't think it will take too many years. I believe in the Supreme Court's ability to find its way back, and in the will of the American people to insist that it do so. Despite the challenges, Americans are ready to do what we've always done: insist, demand, and achieve a democracy that works for all people.

In reading recent cases creating corporate rights, I was surprised to discover common cause with former Justice William Rehnquist, whom I had regarded as a bedrock conservative on the Court. Instead, Justice Rehnquist frequently offered the most eloquent resistance and dissent when the Court began creating the corporate speech doctrine in the late 1970s and 1980s. I would like to end with his words in dissent in a case striking down a Massachusetts prohibition on corporate expenditures to influence citizen referenda.

Disagreeing with the majority, Justice Rehnquist closed his dissent with "[I] regret now to see the Court reaping the seeds that it there sowed [referring to the early corporate speech cases]. For in a democracy, the economic is subordinate to the political, a lesson that our ancestors learned long ago, and that our descendants will undoubtedly have to relearn many years hence."

Now is the time to relearn and get to work.

*Jeffrey D. Clements is the former Chief of the Public Protection & Advocacy Bureau in the Massachusetts Attorney General's Office, and is an attorney who has engaged in public and private litigation and appeals since 1988. He founded Clements Law Office, LLC in 2009. He wrote an amicus brief in the *CU v. FEC* case for the Program on Corporations, Law & Democracy; Women's International League For Peace & Freedom; Democracy Unlimited Of Humboldt County; and the Western Massachusetts Committee On Corporations & Democracy. Also see his article Beyond Citizens United: Re-Examining Corporate Rights at www.Cementsllc.com*



graphic: Maguire

We must organize and work to overrule the Court in the way our founders intended and our Constitution provides:

THIS "FREEDOM OF SPEECH" THAT WE ALL ENJOY IS THE GREAT EQUALIZER! WOULDN'T YOU SAY?...



graphic: Matt Wuerker

GROUPS—Courts & Corporations

MOVE TO AMEND
a project of the CAMPAIGN TO LEGALIZE DEMOCRACY



Campaign to Legalize Democracy

is a coalition of pro-democracy groups dedi-

cated to changing the Constitution to: establish that money is not speech and corporations do not have constitutional rights; guarantee citizens the right to vote and to participate in their democracy; and protect local communities and economies against actions by global, national, and state governments. This is a long-term campaign to amend the US Constitution so that it protects citizens and local communities from the power of concentrated wealth to dominate the lives of American citizens. Their website, MoveToAmend.org, explains the issues and gives a series of citizen actions to support the effort and solicits your help to carry out the campaign.

Women's International League for Peace and Freedom has a Corporations v. Democracy Issue Committee dedicated to understanding how corporations use their illegitimate constitutional "rights" and powers to define our law, politics, jurisprudence, work, technologies, food, communities, etc. Their website www.wilpf.org/cvd has a very useful corporate study packet, as well as a Corporate Personhood Organizing Packet.



FREE SPEECH
for **PEOPLE.org**

Free Speech for People is a campaign sponsored by Voter Action, Public Citizen, the Center for Corporate Policy, and American Independent Business Alliance to restore the First Amendment's free speech guarantees

for the people, and to preserve and promote democracy and self-government. Directly targeting the 1/21 decision against the Federal Election Commission, they "call upon the United States Congress to pass and send to the states for ratification a constitutional amendment to restore the First Amendment and fair elections to the people."

Ultimate Civics' goal is to help build a popular movement to support passage of a constitutional amendment that reinstates the primacy of human rights over corporate rights. They work to: inform people of the need to abolish corporate personhood; encourage and assist citizen-driven efforts to pass ordinances; and coalesce these efforts into passing state laws to trigger a national movement for a constitutional amendment. Their resource page at www.UltimateCivics.org has a publications on the growth of corporate power.



celdf.org
THE COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

The Community Environmental Legal Defense Fund (CELDF) helps citizens gain control over their communities via home rule and local ordinances. Their Democracy School teaches how "we can confront corporate control on a powerful single front: people's constitutional rights." In Pennsylvania they have begun the process of organizing "a people's convention of delegates, representing municipal communities, who will propose constitutional changes to secure the inalienable right to local, community self-government free of state and corporate preemption." See their Chambersburg Declaration at www.celdf.org/

Democracy Unlimited of Humboldt County seeks "to create a truly democratic society by provoking a non-violent popular uprising against corporate rule in Humboldt County, CA that can serve as a model for other communities across the United States." They headed up the Measure T campaign to ban outside corporate contributions to local elections. Their website at www.duhc.org gives a history of corporate rule. Also check out their informative bookstore.



The Liberty Tree Foundation for the Democratic Revolution is a nonprofit organization rooted in the belief that the American Revolution is a living tradition whose greatest promise is democracy. It collaborates with organizations and individuals to build strategic pro-democracy campaigns that directly challenge illegitimate power, dismantle oppression, and develop the skills necessary to lay the foundation for a democratic revolution. See www.LibertyTreeFDR.org

Program on Corporations Law and Democracy is eleven people instigating democratic conversations and actions that contest the authority of corporations to govern. Their analysis evolves through historical and legal research, writing, public speaking, and working with organizations to develop new strategies that assert people's rights over property interests. They started the democratic movement against corporate power with their "Rethinking Corporations, Rethinking Democracy" workshops.



v. Our Common Good—BOOKS

by Jim Tarbell

Any story of our highly personal, completely undemocratic, frequently unpredictable, and thoroughly manipulated judicial system, almost always ends up at the Supreme Court. But as three recent books show the story goes much deeper than the Supreme Court. Although the Supreme Court and its interpretation of the US Constitution are consistently the end game in the drive to control the direction of the legal system, there has been much more involved in bringing us the corporate-friendly judiciary that we have today.

Many books have been written about the Supreme Court, but for our purposes, Pulitzer Prize winning Professor James MacGregor Burns' 2009 book *Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court*, provides the best overview. Named after FDR's attempt to control the court by appointing additional justices, *Packing the Court* shows how the court has been continually controlled by packing it with appointees favorable to one political viewpoint or another. Citing Charles Beard, Burns acknowledges that the game was rigged since the framers of the Constitution were "determined to frustrate popular rule in order to safeguard 'the rights of private property against any leveling tendencies on the part of the propertyless masses'...and empowered a judiciary removed from direct contact...in order to 'control' legislation and guard the wealth and power of the propertied elite."

From this starting point, Burns portrays how the Federalists packed the court with John Marshall and his cohorts who cemented the "constitutional status to the 'absolute right' of property." By the latter half of the 1800s, with railroads dominating the economic world, Lincoln began a trend of appointing his fellow railroad lawyers to the court. "Observing the high bench in the decades after the war," Burns points out, "Americans might have mused that corporation heads packed the court as much as presidents...an astonishing number of railroads and other industries put their people on the Supreme Court... all of Grant's appointees were railroad lawyers... corporations would come to be endowed with the full dignity of citizenship. But for many millions of others—the poor and working classes and, above all, the freed slaves—the space of freedom would shrink as the nation's wealth and power burgeoned."

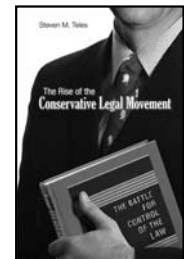
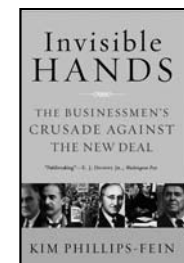
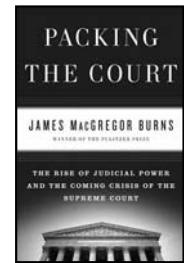
Relating that situation to the present Burns concludes, "Whether in the Gilded Age of the late nineteenth century or the Gilded Age of the turn of the twenty-first century, the justices have most fiercely

protected the rights and liberties of the minority of the powerful and the propertied. Americans can not look to the judicial branch for leadership. They cannot expect leadership from un-elected and unaccountable politicians in robes."

The interim story of the courts between the two Gilded Ages is highlighted by FDR's success at getting the courts to shun the interests of big business and bless his popular reforms encased in the New Deal. From there the story is picked up in Kim Phillips-Fein's book *Invisible Hands: The Businessmen's Crusade Against the New Deal*. For immediately upon being ousted from their traditional seats of power, big business, led by the Duponts, mounted a charge that led to the conservative movement that eventually elected Ronald Reagan. It was this business-led charge that discovered and coveted the Austrian economists Ludwig Von Mises and Friedrich von Hayek, whose free market devotion gave a holy glow to the elites of monopoly capitalism.

It was this movement that found and promoted Goldwater, who, faltering in the polls during his 1964 run for the presidency, realized that his pro-business agenda fit well with the racist conservatives upset by the civil rights movement and the cultural bigots angered at the cultural revolution unfolding during the sixties. From there, the businessmen simply had to wait in the wings, controlling the show while their populist minions and millions of corporate foundation dollars got Reagan elected.

Steven M. Teles' *The Rise of the Conservative Legal Movement: the Battle for Control of the Law* takes the story from there. He documents how even though the business lords had taken over the Presidency, they still had difficulty controlling the courts and their interpretation of the Constitution. He also highlights the realization that in order to change the courts, the conservative legal movement had to change the entire culture of law. To do this, they reached back to Von Mises and Hayek and using massive corporate foundation funding created a legal philosophy that became known as law and economics, in which the free-market principles of von Mises and Hayek became enshrined as "divine truths" demanding that law "bow" to their "universal wisdom." They funded lavish retreats for law professors and judges. They started the Federalist Society to network conservative law students, professors and the judiciary. They established their own law schools, then infiltrated and co-opted the most prestigious law schools in the country. And now they finally have their majority on the Supreme court.



A Call to Americans: Mobilize and Defy the Court

by Riki Ott

If someone had told me twenty-five years ago I would be working to amend the US Constitution to get America back on track with the vision of our Founders and early Americans—a government of, for, and by the people, I would have asked what they were smoking.

But life happens. I hopped from the Lower 48 to Alaska, and from toxicologist to fisherman to community activist when the Exxon Valdez spilled millions of gallons of oil into Prince William Sound.

Along with everyone else in Cordova, my new home, I rallied to defend the Sound. Our way of life, our economy, our very existence as a fishing community was at stake. It was community-level teamwork and it was empowering.

Two of the many helping hands were those of a young single mother, Lisa Marie Jacobs, who switched from helping the emotionally-distraught, to running the local legislative office giving political voice to the town's demands.

While working as a volunteer to drive people's demands into law, I ran into Gershon Cohen at the state Capitol. Gershon, a potter from Haines, had dusted off his academic training in molecular biology to join the citizen storm over the Governor's proposal to slash the state's strong water quality protections.

My work to hold Exxon accountable to the people, Gershon's work to keep industrial polluters from dumping wastes into Alaska's waters, and Lisa Marie's work to empower people to participate in our democracy were all being thwarted by corporate power.

Frustrated that the people's voice was constantly drowned out by corporations obsessed with maximizing profits at the expense of our quality of life and the environment, we formed Ultimate Civics, which Earth Island Institute accepted as a new project. We made it our mission to help coalesce a popular movement to amend the US Constitution to affirm that only human persons are entitled to constitutional rights. We were motivated by outrage over the takeover of America by Big Business and the resulting loss of control over our own lives and our government.

Eight months later, the Supreme Court's decision in *Citizens United v. Federal Election Commission* is a radical undermining of our sovereign self-governance. It ushers in government of, for, and by the Corporations. The ruling leaves ordinary citizens little power to keep corporate influence out of democratic decision-making.

Mind you, *Citizens United* is merely the last straw in a haystack of successful corporate attempts to extend corporate constitutional "rights" to corporate persons. The



US Supreme Court has been blurring the distinction between "natural persons,"—real living human beings—and "artificial persons"—corporations—since 1886.

But the timing of this decision overlays the eyes of several citizen storms over the economic meltdown and recession, failure to pass health care reform, and the lack of a response to the climate crisis. In this cauldron of chaos lie the seeds of deep fundamental change—the seeds of creating a true democracy and a government of, for, and by the People.

We must lend our hands, talents, and passions to building a grassroots movement to protect democracy from unchecked corporate power. We need to grow the grassroots movement to pass municipal legislation and resolutions that defy the Court and strip corporations of their personhood (human rights) status. We must strike corporate personhood language from State laws.

Action to abolish corporate personhood in municipalities, counties, and states could be the forefront of a movement to push this issue right back to the federal level and force Congress to consider amending the US Constitution to do the same. We must coordinate our individual actions through local groups and national coalitions.

Join the Campaign to Legalize Democracy (CLD). Ultimate Civics and the other organizations in CLD (now 50 groups strong) have formed a diverse coalition in response to *Citizens United*. CLD aims to amend the US Constitution and end the illegitimate legal doctrines preventing the American people from governing themselves. First and foremost, CLD will move to amend that only human beings are entitled to constitutional rights by tearing out the root of the problem—corporate personhood, which underlies the election financing, and free-speech issues raised in the *Citizens United* case.

We must unite to reverse this outrageous ruling—and the underlying morally wrong premise that corporations and other artificial persons are entitled to real human rights.

All aboard for democracy!

Riki Ott is director of Ultimate Civics, and a co-organizer of the Campaign to Legalize Democracy. She lectures nationally on the democracy crisis. Learn more and sign the Motion to Amend the Constitution at www.MoveToAmend.org to affirm rule by the people, not corporations.

The timing of this decision overlays the eyes of several citizen storms over the economic meltdown and recession, failure to pass health care reform, and the lack of a response to the climate crisis. In this cauldron of chaos lie the seeds of deep fundamental change.



Look to Congress for Supreme Court Fix

by Jane Anne Morris

How is it unconstitutional for a state to require place-of-origin labels on meat? Regulate sale of its water? Establish worker protections stricter than federal standards? Where does the US Constitution say

that states cannot require that toxic waste be sorted and labeled? Cannot include labor standards in state purchasing policy? Cannot make companies disclose what chemicals they use in products and facilities?

The Constitution is silent on these matters, but the Supreme Court has interpreted the Constitution all the way to next Tuesday in order to declare these measures unconstitutional. Supreme Court interpretations devised concepts like free speech rights for corporations, and that workhorse, money equals speech, to hobble election reform. Judicial interpretation enables corporations to use the Civil Rights Act to claim damages for being “discriminated” against. Supreme Court interpretation dished out rights, powers, and protections for corporations while repeatedly denying the same to minorities, women, and workers.

Constitutional scholars routinely describe the Court as the most powerful court in the history of the world. In addition to its untrammelled interpretive latitude, that singular institution wields a bundle of powers. It decides cases, rules on the constitutionality of acts of the executive branch, determines the distribution of powers between state and federal government, and judges the constitutionality of any law passed at any level of government. It can “call up” any court’s ruling if it disagrees. Justices scan the nation’s laws, and using easily rigged “test” cases, void any law not to their liking.

This power does not come from the Constitution, which, apart from a few matters (like ambassadors and Indian tribes), specifies very little about the Supreme Court. The vast powers and maxed-out discretion exercised by the Court come from the US Congress. A series of Judiciary Acts (1790, 1875, 1925, and 1988) sketch (and stretch) the dimensions of its power.

So if you are concerned that corporations have most of the constitutional rights of human persons, or that numerous “green” state and local laws are thrown out as unconstitutional, then the true object of your discontent is neither the Constitution, nor the Supreme Court, but Congress.

Congress could borrow from other countries’

systems that not only tolerate less poetic license in judicial interpretation, but spread around what the current Supreme Court concentrates into one big-box power center. Special constitutional courts rule on the constitutionality of laws. A separate court decides cases between parties. Yet another court handles human rights violations, and by “human,” they mean, uh, human, and not corporate persons. Sometimes, legislative bodies can overrule court decisions.

Within the US, state legislatures and members of Congress have offered correctives to the existing “Godzilla” Supreme Court.

Such as, requiring a supermajority or unanimity of Supreme Court Justices to declare a law unconstitutional; allowing Congress (or another legislative body) to overrule a decision on constitutionality; and removing the Congress-granted power of the Court to second-guess state courts on constitutional questions. A national referendum has also been suggested.

Congress need not retain two centuries of Congressional Acts uploading legislative powers into the judicial bailiwick. Perhaps Congress likes it this way, confident that any serious and effective reforms will be declared unconstitutional by the “branch” next door.

The ball is in our court, the people’s court: the US Congress.

Corporate anthropologist Jane Anne Morris's Gaveling Down the Rabble (Apex Press, 2008) is cited in an amicus brief filed in Citizens United v. FEC. See also, "Why a Green Future is Unconstitutional," (Spring, 2009 Synthesis/Regeneration). Morris (gaveljam@yahoo.com) is currently writing a book about the Supreme Court.

CU v. FEC: Red Herring

Before running off to counter this recent Supreme Court decision we ought to sort out what this decision does and does not do. The case changes very little of our current situation. Look at any index: the role of money in elections, voting records that mirror campaign contribution patterns, the quality of debate, or the proportion of legislation clearly designed to benefit some corporate interest group. McCain-Feingold recalibrated, rearranged, and redecorated the loopholes used to determine how election money flows and is tallied. It did not eliminate that money, or the influence it reflects.

As this case was being heard in the fall of 2009, I noted the Supreme Court’s false framing: “Must we limit speech in order to have free and fair elections? Or, must we accept corporate-dominated political debate in order to preserve free speech? This false dilemma disappears if we reject corporate personhood. Only if we pretend that corporations are “persons” under the Constitution, is limiting corporate “speech” a constitutional infringement.”

Corporations function like retroviruses, taking over the rights and protections that we wrote for humans, and then using them against us, their human hosts. The opinion of the Court is chock full of paeans to the nobility and preciousness of unfettered free speech—of corporations. Rights we the people fought for—at the cost of much life, liberty, and happiness—are now used with great (and seemingly invisible) regularity to shield corporations from government “interference.”

Rather than overstating the significance of the Citizens United decision, let’s address the problem directly. Peek outside the democracy theme park, and repeat after me: Only if we pretend that corporations are “persons” under the Constitution, is limiting corporate “speech” a constitutional infringement, and kick that red herring out of the way.

This is an excerpt from “Court’s Campaign Money Ruling Is a Red Herring,” by Jane Anne Morris. See the entire piece at www.thealliancefordemocracy.org



graphic: Peter Veres

The Gruel of Law

The Rule of Law is usually favorably contrasted with the arbitrary Rule of Men. When men rule, their legal rulings can be inconsistent, and usually are unfair to their personal enemies. With the Rule of Law, there is a system to create a body of law. Judges are supposed to apply that law, and an appeals system is available to try to make sure the judges act impersonally. Of course, all human systems are prone to human error, but in general the Rule of Law has provided societies with benefits.

However, the rule of law is no guarantor of justice, or even true equality before the law. The laws themselves are made by people with personal agendas. Under the Constitution of the United States of America, federal laws are jointly written by the legislative branches of Congress, the House and the Senate. From the very first Congress, these legislative bodies have written laws that favored some citizens (or sometimes non-citizen human beings) over others. In a sense, the Rule of Law simply institutionalizes the arbitrary rule of men. It makes it predictable, but not necessarily just.

In theory, the richest Americans are under the same law as citizens in the middle class or lower class. In reality different sets of laws face the various economic classes. In the more stark terms of Dickens's 19th century England, the rich eat sumptuously of the law, the poor eat gruel, and the middle class mostly gets something in between and the courts verify the distinction. To keep our minds on reality instead of theory, I suggest we refer to our legal system as the Gruel of Law. That is what most Americans are served when they encounter the police, lawyers, and courts.

In the past the differentiation of law was sometimes shockingly clear. For instance, in Florida and other states of the Solid South before the reforms of the 1960's, the legal code often prescribed different punishments for the same crime, depending on the race of the people involved. In the case of rape, the most severe penalties went to black men raping white

women. White men raping white women received less severe penalties, and so forth until one reached the crime of white men raping black women, which was hardly more than a misdemeanor and almost never prosecuted.

Today, lawmakers craft their weapons of economic and social warfare more carefully. Most notably, people organized as corporations have an entirely different (and more favorable) set of laws applied to them than citizens as individuals do. If you take the view that for-profit corporations are gangs of investors, and that investors tend to be considerably richer than non-investors, you can see that the special privileges of corporations are the white meat of the law, if not its caviar.

For the poor, the law is not something written down, to be studied by lawyers so that it might be used to advantage. It is learned by word of mouth and from police officers. The food in prison may not be gruel anymore, and the courts might sometimes provide a public defender, but for those unable to hire a private attorney the law is worse than gruel: it is a vicious bully.

The law may apply to everyone, but money buys the services of lawyers. So our Gruel of Law amounts to all the justice your money can buy. Money also buys the services of lobbyists and even politicians and entire political parties. The very first Congress of the United States under the Constitution was dominated by men whose friends had bought up the Continental dollars issued by the Congresses of the Revolutionary War. They bought them from veterans and merchants for a few pennies on the dollar. Then they voted that the federal government would redeem them at full face value, using their new power to tax alcohol and imports to pay for this. The veterans and merchants complained, but it was too late. The Gruel of Law was off to a great start in these United States under a greatly enriched political class.

William P. Meyers is the author of The Santa Clara Blues: Corporate Personhood Versus Democracy. He serves on the board of the California Center for Community Democracy.

On the Failure of Corporate Law

by Rebecca Wolfe

“No corporate political campaigns without shareholder votes; no corporate political ads without putting their names on them; no corporate political ads if they have government contracts...these [are] the early ideas or ‘pushbacks’ by the Administration against the Supreme Court’s decision to let the corporations spend all the money they can find to buy our political elections,” according to Keith Olbermann on MSNBC.

Kent Greenfield in *The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities* suggests other ways to reverse the corporate abuse that has increased steadily over the past century and a half. Greenfield points out that:

Large corporations are the most dominant economic institutions in the world today, with power that rivals that of nations. In the United States, corporations gained this power through laws that have provided them an unlimited lifespan, limited liability for their shareholders, legal personhood, and a long list of other benefits. Traditionally, corporations were asked to take account of the public interest. This is no longer the case. Today, corporate law even prohibits managers of corporations from caring about the public interest—or employees, the environment, or communities—if the shareholders of the company will be harmed.

Greenfield also reminds us that Chief Justice John Marshall wrote, “the objects for which a corporation is created are universally such as the government wishes to promote.” He also highlights the importance of changes in The American Law Institute’s Principles of Corporate Governance

between the first draft in 1982 and the final publication in 1994. The Business Roundtable insisted upon the deletion of controls on corporate power outlined in the 1982 draft before the Principles appeared in 1994. Consequently, the final guidelines created irreconcilable differences between the obligations of the corporation to obey the law and the absence of enforceable duties of individuals within corporations to comply with the law.

To correct the inconsistency at the heart of corporate abuse, Greenfield suggests that the *ultra vires* doctrine, which has been viewed as either unimportant or defunct, is actually neither. Under the *ultra vires* doctrine, any powers exerted that are “beyond the powers” of the corporation are restricted. This was once a way to prevent large aggregations of economic power. A return to policies and laws based upon *ultra vires* could be a strong tool in reforming corporate practices, particularly in light of the recent US Supreme Court ruling that allows unlimited corporate spending on political campaigns.

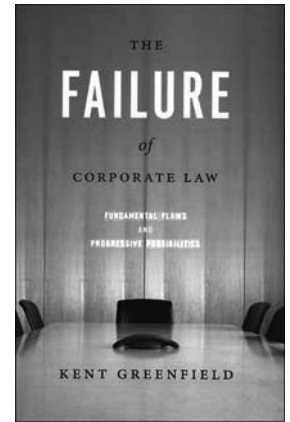
Greenfield explores three principles in depth:

Principle 1: The ultimate purpose of corporations should be to serve the interests of society as a whole;

Principle 2: Corporations are distinctively able to contribute to the societal good by creating financial prosperity;

Principle 3: Corporate law should further principles 1 and 2.

Kent Greenfield’s perspectives and recommendations around *ultra vires* are a useful contribution to this important policy discussion.



Rebecca Wolfe is a career educator. She established and led The Language School of Spokane (1985-1990). She earned a Ph. D. in Leadership Studies from Gonzaga University (1997), teaches for Western Washington University, and volunteers in environmental work and progressive politics.



ALLIANCE FOR
DEMOCRACY

JOIN NOW!

Membership includes a subscription to *JUSTICE RISING*

Name _____ \$50 membership
Address _____ \$35 regular membership
_____ \$25 tight-budget membership
Phone _____ Monthly sustaining member @ _____/mo.
Email _____ I want to be a member, but can't afford a
_____ additional contribution.
 _____ additional contribution.

Chapter Affiliation _____

Method of Payment (circle one): Mastercard Visa Check Money Order

Card# _____ Exp. Date _____ Signature _____

Please clip and return to The Alliance for Democracy, P.O. Box 540115, Waltham, MA 02454-0115, or fill out the form at <https://secure.groundspring.org/dn/index.php?aid=4065> to join or donate to the Alliance for Democracy.



ALLIANCE FOR DEMOCRACY

P. O. Box 540115
Waltham, MA 02454-0115

Tel: 781-894-1179
Email: afd@thealliancefordemocracy.org
www.thealliancefordemocracy.org

Why You Should Care

Free market legal theory is a fraud

Corporate foundation money has transformed legal thought by funding lavish retreats on free-market economics for law professors, judges and law students in a move to connect legal theory to classical economics. Unfortunately, it is a corrupt theory that fails to recognize market externalities that are poisoning the planet and causing global warming. It also fails to take into account depletion of our natural resources and ignores the fact that money is power and only seeks to serve its own ends.

Pro-Corporate Supreme Court

There is a bare Supreme Court majority intent on eliminating all restrictions on corporate activity. Their decision against the FEC on 1/21/2010 allows corporations to spend unlimited amounts of money as independent agents in any political race. By spending just 1% of corporate profits, the 100 largest corporations will be able to double all current political spending by all of the parties and federal candidates.

Chamber buying out state courts

The US Chamber of Commerce has long had a campaign to take over state supreme courts. The AfD helped to first uncover this project when they revealed that the US Chamber of Commerce had collected \$4.2 million from 383 corporate entities to defeat a judge they did not like in Ohio. "Between 2000 and 2008, over \$200 million was contributed to State Supreme Court campaigns, more than twice the \$85 million contributed throughout the 1990s." Judges in partisan races are 23% more likely to favor business interests, perhaps because that is where their job security is coming from.

Corporate lawyers gaming the system

Since the rise of the railroad monopolies in the 1800s, corporate lawyers have been a fully funded attack team to manipulate the law in favor of their clients and against our common good. From corporate personhood to the recent decision to allow unlimited corporate campaign spending, corporate lawyers are gaming the system against We the People.



What You Can Do

Join the Campaign to Legalize Democracy.

Amend the US Constitution to legalize democracy. Go to www.MoveToAmend.org, sign the petition and share the message with your friends. Join the Move to Amend Facebook page. "Take Action" by: writing a Letter to the Editor using sample letters on the website; call in to a talk show using the tips on the Action page; ask your local candidates to support the Move To Amend campaign; use the materials at the website to pass a local resolution supporting a Constitutional amendment revoking all corporate rights; present a golden megaphone award to a local corporate CEO; organize Fourth of July events such as a float, street theater, a reading of MTA's Declaration of Independence from Corporate Rule; and most importantly, get your friends, neighbors and community together for a forum on rewriting the US Constitution from the grassroots and show the world that We the People are in charge.

Reclaim corporate law for the public good.

Restore the mandates of the American Revolution and push to have corporations once again serve our public good. Get Congress to rewrite the Judiciary Acts in order to de-centralize the power of the Supreme Court and establish a true democracy where We the People are the final arbiters of our laws. Or learn about corporate law and re-establish the principle that corporations are to serve the public good. Invigorate the usage of *ultra vires* to keep corporate business within the legal boundaries of their charter.

Promote the Rights of Nature.

Join the movement to rewrite the US Constitution to emphasize that nature is not property and has important rights of its own. Follow the wisdom of the indigenous cultures in Ecuador and Bolivia that have written the Rights of Nature into their new national constitutions. Only by giving rights to nature can the natural systems that all life depends upon be saved for the good of all life on earth.