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Cold Case Democracy: The Last Rites

The Outcome of Elections is Key to Wealth and Power

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Before we begin Part Three, let's all take a deep breath. While this Court will most probably continue to re-examine the constitutionality of any restriction on corporate spending to influence the electoral process, the decision in Citizens United v. Federal Elections Commission ***did not address the question of direct contributions to a political campaign from corporate treasuries.*** *The prohibition against corporations giving money directly from their treasuries to a candidate's campaign, or to political parties, still stands. In addition, corporations cannot fund political ads without their identity being disclosed.*

While this may be a moot point, since corporations can now spend millions, and billions, on ads which advocate expressly for, or against, a particular candidate, for anyone to say that Justice Alito's mouthing the words, "not true," when President Obama said he believes corporations will be allowed "to spend without limit in our elections" hasn't been paying attention. There are still some limits left, though they may be meaningless, so Justice Alito is technically correct. (Gag me with a spoon.) But this is exactly the way the Supreme Court has done the bidding of the "opulent minority" since Dartmouth v. Woodward (1819), dismembering democracy via the death of a thousand, incremental cuts.

Let's proceed with "Cold Case Democracy: Part Three – Last Rites."

> "The government was once the only power capable of reining in the corporations and holding them accountable to the people. That is why corporations have invested such enormous capital in taking over the government." – Charles Sullivan

The "opulent minority" knows that controlling the outcome of elections is the key to even more wealth and power, and that by using their property, e.g. the corporation, a mechanism for the accumulation and concentration of wealth, which can then be translated into political power, they can achieve that control. And the electoral process, as it was designed to do and as it still stands, ensures that only those with a money/property qualification have a realistic chance at even running for office, let alone winning. Ballots are cast invisibly on electronic machines owned by members of the "opulent minority," and the machines run proprietary software which citizens may not examine.

In addition, the Supreme Court has continually re-examined the rationale for there being any justification for curbing the "free speech rights" of corporations, and Congress, by

bending over backward not to trample these "rights," has enacted campaign contribution laws written as overly-complex, multi-provisioned behemoths ripe to be struck down piece by piece in incremental challenges.

Until January 21, 2010, the only legal way for corporations to contribute to political campaigns was through Political Action Committees (PACs), which raise money from shareholders and executives. Executives and their families could also make individual and personal contributions, but there's a limit to how much money either PACs or individuals can raise and give. These were the rules for paying to play.

Citizens United v. Federal Elections Commission re-wrote the rules. The Supreme Court used CU v. FEC in precisely the same way railroad corporations used Santa Clara County v. Southern Pacific Railroad (1886).. Santa Clara was changed from a simple tax case brought to determine which government entity, the state of California or Santa Clara County, should have assessed the rights-of-way of the Southern Pacific Railroad, into a case about the "rights" of corporate "persons" under the Fourteenth Amendment. By using the issue of whether "Hillary: The Movie" is an "electioneering communication," CU v. FEC struck down restrictions on "explicit" electioneering ads, and moved one step closer to removing any restrictions whatsoever on corporate campaign contributions made from corporate general treasuries directly to political candidates. Both Santa Clara and CU v. FEC were used to force much broader constitutional issues than the cases originally brought before the Court.

But on the voters', as opposed to the corporate side of the equation, the US Census Bureau projects that by 2050 America will reach a "minority tipping point," and not of the opulent kind. By 2050 the majority of us will no longer be white. In fact by 2031 minority children will be the majority.

This is the rationale for challenging Section 5 of the Voting Rights Act of 1965, the re-creation of "legal" barriers to voting, such as extreme registration requirements, voter roll purges, too few polling places and/or voting machines, etc., until we reach all the way back to poll taxes, literacy tests and property qualifications, perhaps even racial and gender qualifications. Those who are propertyless, poor, minorities, immigrants and dissidents are slated for disenfranchisement. Northwest Austin Municipal Utility District Number One v. Holder (2009) was brought to challenge the pre-clearance of changes in voting procedures the VRA imposes on nine states and parts of seven others, including much of the former Confederacy.

The goal of this pincer play, CU v. FEC and Northwest Austin v. Holder, is to legalize the injection of unlimited amounts of corporate cash directly from massive corporate treasuries into national, state and local electoral processes while beginning to disenfranchise 25% of the population via the reinstitution of restrictions on voting.

Citizens United is a non-profit, conservative advocacy corporation which receives contributions from for-profit business corporations. David Bossie, CU's President/Director, served as chief investigator on the Whitewater hearings into Bill and Hillary Clinton's real estate investments. Bossie also investigated Bill Clinton's alleged campaign abuses.

CU filed in District Court in the District of Columbia, challenging the constitutionality of part of the 2002 Bipartisan Campaign Reform Act (BCRA), or McCain-Feingold, which concerns "electioneering communications." These were subject to disclosure of funding whether

generic “issue ads” or campaign ads advocating expressly for, or against, a candidate, and subject to the ban on corporate funding. Under BCRA it was illegal to use corporate funds to pay for broadcast, cable or satellite transmission of electioneering communications that advocate election or defeat of a named candidate for federal office paid for by corporations 30 days before a presidential primary and 60 days before a general election.

Despite CU’s contention that its film was a factual documentary and not an electioneering communication, the FEC maintained that it was, and moved to stop CU from paying to show or promote “Hillary: The Movie,” because BCRA requires that such electioneering communications contain spoken and written disclaimers within the film and the ads for it, as well as disclosure of financial contributors’ names..

Although BCRA was narrowed by FEC v. Wisconsin Right to Life, Inc.(WRTL, 2007) stipulating that in order to be banned, an electioneering communication could be “susceptible to no other reasonable interpretation other than as an appeal to vote for or against a specific candidate,” using this criteria, the US District Court of Appeals for the District of Columbia found that the film violated Section 203 of BCRA because part of the funding came from CU’s general treasury rather than its PAC. The District Court also found that the film “….is subject to no other interpretation than to inform the electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary Clinton world, and that viewers should vote against her.” That made it an “electioneering communication,” which CU had planned to broadcast during both the 30-day and 60-day blackout periods.

The District Court denied CU’s motion for a preliminary injunction requesting that the Court prevent FEC from enforcing the law. Its lawsuit dismissed, CU petitioned the Supreme Court.

Theodore Olson, council for Citizens United, represented George W. Bush in the Supreme Court case that stopped the Florida recount in the 2000 election. Chief Justice John Roberts was then Florida Governor Jeb Bush’s legal advisor. Roberts, appointed to the Supreme Court in 2005 by George W. Bush, agreed to hear CU v. FEC at Olson’s request.

CU v. FEC was originally brought before the Court on a narrow issue, whether FEC, which is charged with enforcing campaign finance law, was acting legally in stopping CU from paying to show or promote “Hillary: The Movie..” Since the Supreme Court usually rules narrowly, avoiding making decisions on broader issues than necessary, lawyers expected a narrow ruling, perhaps concluding that a nonprofit like CU shouldn’t be covered by the ban. Justice Sotomayor had even posited that the Court could lift some restrictions without making a broad, constitutional ruling.

But rather than ruling on the case brought before it and the law which applies, the Court took the highly unusual step of forcing the issue of reversing well-established judicial precedents upholding the ban on corporate spending expressly advocating the election or defeat of candidates. The Court ordered a re-argument of Austin v.. Michigan Chamber of Commerce (1990), and the part of McConnell v. FEC (2003) which addresses the validity of Section 203 of BCRA. And since this was not the case brought before it, the Court’s seizure of this issue is illegitimate.

When the Court considered this much broader argument, it changed a case about a limited

challenge to BCRA into an unprecedented challenge to the Tillman Act of 1907, which outlawed corporate financing of political campaigns directly from corporate treasuries, and which successive Supreme Courts had repeatedly upheld. Tillman stood until 1971, when the Federal Elections Campaign Act allowed the creation of PACs.

By 1976 restrictions on campaign contributions by corporations had already been challenged. And while corporations were still restricted to the use of PACs to contribute directly to political campaigns, Buckley v. Valeo split hairs by **creating the distinction between limiting contributions,** money given directly to a candidate's campaign, **and limiting expenditures,** money spent on behalf of the candidate This case was the beginning of the Court's analysis of the constitutionality of campaign finance restrictions.

The Court ruled that while money given directly to a candidate by an individual could be limited, the amount spent on behalf of a candidate, if not in a coordinated manner, could not, considering the latter unconstitutional because it limited protected free speech and lacked a compelling government interest to sustain it. The Court, however, suspended this distinction in the case of corporate "individuals," ruling that corporate spending on behalf of a candidate **could** be limited, even if uncoordinated, since the government did have a compelling interest in preventing corruption or its appearance. But by equating money with speech, this ruling would eventually allow money accumulated via the corporate mechanism to overwhelm the speech of average citizens.

Buckley v. Valeo also created two categories of political ads, express ads and issue ads. An ad explicitly urging the election or defeat of a named candidate was subject to federal restrictions limiting the size of individual contributions, and the disclosure of contributors' identity was required. Corporate contributions for such express ads were banned.

Generic, or "issue ads," intended to "educate" the public on a broader issue, rather than advocate for or against a specific candidate, were held to be protected by First Amendment speech guarantees and so beyond the reach of federal election laws. The identity of an issue ad's sponsors did not have to be disclosed, there was no limit on spending for it, and the spending could come from any source. While the Court suggested the words "vote for," "support," "defeat," "elect," and "reject" as mere guidelines delineating express from issue ads, they soon turned into "magic words," and as long as an "issue ad" avoided them, no matter how critical or supportive of a particular candidate, they were held to be legal.

In 1978, First National Bank of Boston v. Bellotti raised Buckley's barrier against restricting corporate campaign spending even higher. While federal law had prohibited funding from corporate general treasuries since Tillman (1907), Massachusetts wanted to extend that prohibition to prevent corporations from buying ads to influence referendum elections unless their material interest was directly affected.

Bellotti held that **such spending is "speech,"** and that the prohibition violated corporations' First Amendment free speech "right." While the Court had long extended constitutional rights to corporations, Bellotti changed tactics and found that "speech" itself is protected. That made the question the Court addressed not whether a corporation has a constitutional right to influence elections, but whether "speech" (spending) which "informs debate" on matters of public interest loses **its** First Amendment right if the "speaker" (spender) is a corporation.

By giving disembodied "speech" (spending) First Amendment protection, the Court was able to strike down the Massachusetts law because it "discriminated"
by allowing corporations to "speak" only on some issues and not others.

This disembodied speech approach allowed Justice Powell to refer to corporate spending as the "essence of self-government" without addressing the contention that disproportionate amounts of corporate money posed a threat to democracy.

In 1985 the Court struck down PAC expenditure limits as too broad in National Conservative PAC v. FEC, holding that **such spending was "speech,"** and that limiting it was not justified by a finding of corruption. And even if such corruption were a legitimate concern, these restrictions imposed a burden on small, non-profit corporations as well as unincorporated organizations.

In FEC v. Massachusetts Citizens for Life (1986), the Court then held that **the ban on spending from general treasury funds was unconstitutional** when applied to ideological advocacy groups. Up to this point, the issue of regulating corporate activity hadn't concerned the corporate form itself, only its ability to use accumulated wealth to disproportionately influence political outcomes. (This was a felony in 1776.) The Court didn't see MCFL as posing this threat because its money didn't come from corporate profit in the "economic marketplace," but from contributions as a result of the popularity of its ideas in the "political marketplace." The Court ruled that an additional "burden" couldn't be placed on MCFL just because it was organized as a corporation, **carving out an exception to the ban on corporate political spending from general treasury funds** for ideological non-profits not created by for-profit corporations which have no shareholders and don't accept money from business corporations.

You can see where this was going.

The Michigan Chamber of Commerce opposed the part of the Michigan Campaign Finance Act which prohibited using "corporate treasury funds for independent expenditures in support of or opposition to any candidate in elections for state office." The Chamber of Commerce claimed that preventing them from buying newspaper ads supporting their choice for a Michigan House of Representatives seat with money from their general treasury fund rather than from an independent fund "designated solely for political purposes" violated their First and Fourteenth Amendment rights.

But in 1990, Austin v. Michigan Chamber of Commerce upheld the law, limiting spending from the general treasury of non-profit corporations which are **not** ideological advocacy groups, such as groups of for-profit businesses like Chambers of Commerce. In Austin, the Court first discussed the need to avoid corruption or its appearance, broadening the definition of corruption, and contradicting Bellotti in recognizing the ability of money to corrupt office holders through the creation of political "debts."

The Court found that by limiting the corporation to use of a special independent fund raised entirely for political purposes instead of general treasury funds, which may have "little or no correlation to the public's support for the corporation's political ideas," the law was "supported by a compelling government interest in preventing political corruption."

Austin also recognized the possibility corruption of ideas in the political marketplace when

the Court found that “the state’s decision to regulate only corporations did not violate the Fourteenth Amendment’s Equal Protection Clause, but was precisely tailored to serve the compelling state interest of eliminating from the political process the corrosive effects of political ‘war chests’ amassed with the aid of legal advantages given to corporations” by the state, an “unfair” economic advantage which distorts public debate in the political arena regardless of their ideology, creating a compelling interest for the government to make sure corporations don’t spend resources accumulated in the economic marketplace to obtain unfair advantage in the political marketplace.

Austin held that though the law placed a burden on the chamber’s “freedom of expression,” restrictions on corporate spending to support or oppose political candidates were legal, characterizing the exploitation of economic advantage as a form of corruption which the state has a compelling interest in preventing. This was reaffirmed in Mc Connell and **was the reason such contributions were limted in Buckley v. Valeo,** which still stands.

However, in CU v. FEC Justice Kennedy stated that “(W)e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. The fact that speakers (i.e. donors) may have influence over or access to elected officials does not mean that these officials are corrupt. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness.”

This Court appears to believe that manipulating the electoral process by spending billions of dollars is “democracy.. This is the “legal” result of the absurd assertion, the legal fiction, the lie made law, that corporations are “persons” and that money is “speech.” And since in 2008, even with prior restrictions in place, corporations and members of the “opulent minority” injected nearly $5.3 billion into our electoral process. The majority of the Roberts Court are possibly the only ones who think corporate money in politics should be increased other than corporate shareholders.

In Austin the Court recognized the ability of money to corrupt officeholders via the creation of political debts, and CU’s attorney, Theodore Olson, argued exactly that just a few months before he began to argue the opposite. In Caperton v. Massey Olson maintained that independent spending **did** affect an elected official, that spending such a large amount of money created a “probability of bias” and that “the improper appearance created by money in (judicial) elections is one of the most important issues facing our (judicial) system today.” However in CU v. FEC Olson argued that “there is simply no evidence that corporate (and union) independent expenditures have a ‘corrosive and distorting effect’ on the election process.” (CU brief co-authored by Theodore B. Olson)

After Watergate, Congress amended the Federal Election Campaign Act, creating the Federal Elections Commission to monitor donations to, and spending on, federal campaigns. FECA had also limited both contributions, money given directly to a candidate’s campaign, and expenditures, money spent independently on behalf of a candidate. Buckley v. Valeo (1976) struck down limits on independent expenditures by individuals, however it upheld them if the “individual” was a corporation.

An FEC ruling designed to strengthen political parties allowed the use of unrestricted funds,

or “soft money,” contributed to a political party as a whole, not to a specific campaign, for party-building activities such as voter registration, get-out-the-vote drives and issue ads at the grassroots level. This created a loophole through which both national parties funneled money to state parties.

This soft money effectively killed post-Watergate reforms, since national parties could still solicit money from private donors and then use state parties as middlemen to launder money meant for party-building, avoid spending limits and hide the source of millions in donations. The only thing that changed was that checks were made out to a political party rather than an individual’s campaign.

In the 1996 election cycle, the Republicans’ soft money spending increased by 178%, the Democrats’ by 242%. Both Clinton and Dole participated directly in raising huge amounts of money for their national parties, which was funneled through state parties to finance “issue ads” indistinguishable from campaign ads except that they avoided using Buckley’s “magic” words.” This allowed both candidates to ignore the spending limits they’d agreed to in exchange for public financing of their campaigns.

By this time unions, non-profits and corporate-funded groups, in addition to political parties, were taking advantage of Buckley’s “magic words.” They unleashed a torrent of completely unregulated ads, many of which were clearly “attack ads,” but without those “magic words” they remained legally “issue ads,” for which unlimited amounts of money could be spent without disclosing the identity of the sponsors.

BCRA made all such soft money disappear when it was enacted in 2002, and the Court first reviewed BCRA in McConnell v. FEC the very next year. McConnell acknowledged that Congress had the power to prohibit corporations from using money from their treasuries to finance explicit electioneering communications, specifically upholding Section 203 of BCRA.

While BCRA was held constitutional in nearly all respects in McConnell, the Court limited the scope of that decision in WRTL (2007) by allowing corporations to finance the broadcast of generic “issue ads,” ruling that the funding source limitations in BCRA apply only to communications that either directly urge a vote for or against an identified candidate, or are the “functional equivalent” of such advocacy. However, restrictions on ads which are the functional equivalent of express advocacy, such as denigrating a candidate’s character, and the disclosure requirement for all electioneering communications remained intact.

Until that point Supreme Court doctrine had allowed the total prohibition of spending from general treasuries of for-profit and non-profit corporations for campaign contributions as well as independent spending on a candidate’s behalf, including electioneering communications. Corporations could only solicit for their PACS from corporate shareholders and executives, and the Court recognized a compelling interest in preventing the distortion of the “speech market” when corporations leverage their economic advantage within it.

The Court had separated direct contributions to a campaign from independent spending on behalf of that campaign. It had separated for-profit corporations from non-profit corporations, ruled that limiting contributions of small, ideological non-profit corporations was a burden that “chilled” free speech, and was plainly moving, albeit in incremental steps, toward striking down any limits whatsoever on corporate campaign spending. To that end, this Court overruled Austin, which held that government can limit for-profit corporations to

the use of PACs to fund express electoral advocacy, and the part of McConnell that upheld McCain-Feingold's restriction on such electioneering communications.

The Court has now ruled that restrictions of corporate financing of electioneering communications is unconstitutional. This fundamentally alters the laws governing corporate participation in the electoral process. Immense corporate conglomerations are now one step away from crushing the votes of individual citizens under billions in cash funneled directly from corporate treasuries into political campaigns. Corporations could write checks directly to the campaigns of officials they'd be asking for billions of taxpayer dollars, checks for the removal of "too-costly" health and safety regulations, and checks to secure corporate-specific loopholes in any regulation or tax code that does become law (See the Enron loophole). (Nota bene: This ruling does NOT allow contributions from the general treasuries of corporations directly to a candidate's campaign. That's the last step. But given the amount of money that will be unleashed by this decision, they may not even have to take it..)

However, bans on contributing to, and influencing, US elections by foreign nationals, corporations and governments with part ownership in American corporations are now meaningless. Large foreign shareholders, like large domestic shareholders, can demand a say in government services from candidates they finance.

CU v. FEC was no more about the right to air a pro- or anti-candidate "electioneering communications" within 30 to 60 days of an election and not disclosing who paid for it, than Santa Clara was about who had the right to tax the Southern Pacific Railroad's rights-of-way. Corporate "personhood" was the subtext of Santa Clara. The subtext of CU v. FEC was strking down limits on corporate campaign contributions. The subtext of corporate "free speech" is always control, whether of legislation and regulation, or the outcome of elections influenced by spending/speaking with billions of dollars worth of corporate profits in order to amplify the power of the corporate "voice."
In overturning the ban on political contributions directly from massive corporate treasuries to sponsor explicit, electioneering communications, Supreme Court Justices continue to read into the Constitution "implicit" rights for corporations which are expressly not there. **Corporations are never mentioned in the Constitution,** so there is no rationale for corporate constitutional "rights." But the Supreme Court has made it its mission to insert corporations into a document created specifically to bar entities like the East India Company from the political process.

Under the law, corporations have no constitutional standing other than the rights of their human owners, the "opulent minority," who already have the constitutional right to "speak" for their corporations by contributing to, and spending on, campaigns. In reality, as opposed to the legal fiction that money is speech and corporations are "persons," a corporation is incapable of speech unless it is permitted to do so via metaphor, and the metaphor chosen by corporate shareholders is money, billions of dollars worth of "free speech" by means of which vast concentrations of wealth are transformed into grotesquely disproportionate political power.
Before a corporate "person" even begins to "speak," its vote has been cast. And since the corporate "person" can "speak" only with money, in order to make more money, thus enhancing shareholder profit, the only debate is over the means to that end, not the end itself. A corporation is literally and legally a business machine, realistically incapable of choosing a candidate, and must literally and legally use its assets, its money, its "speech" in

support of laws and legislators to enhance shareholder profit, since any spending, e.g. speech, not undertaken with that end in mind is a "waste" of corporate assets (Michelson v. Duncan, Del 1979) and opposed to the ruling in Dodge v. Ford Motor Co. (1919) that "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end and does not extend to a change in the end itself. The discretion of the directors is to be exercised in the choice of means to that end…"

With profit their legally sanctioned reason for being, and their usurpation of the constitutional rights of the living, breathing citizens of the United States, corporations will meet little opposition to their openly buying both legislators and legislation when a sizable portion of the population is disenfranchised.

Northwest Austin Municipal Utility District Number One v. Holder, decided 8-1, fooled civil rights groups and liberals, who believe it was a defeat for a case "… brought to tear the heart out of the Voting Rights Act…" (Debo Adegible, NAACP attorney) This is really only the first step in getting rid of the most basic of US civil rights laws.

The suit was brought to overturn Section 5 of the Voting Rights Act of 1965, which requires state and local governments in 17,000 jurisdictions in nine states and parts of seven others to apply to the Justice Department for pre-clearance if they want to change their election procedures, including voter registration and electoral districts' boundaries. These jurisdictions may seek permanent exemption from pre-clearance if they can demonstrate a record of non-discrimination. And though the Justice Department usually approves election law changes, there have been only 17 exemptions since 1965. It just doesn't look good to seek exemption from the VRA.

But in a wealthy section of Austin, Texas, an obscure utility district refused to file for exemption, proceeded to move its only polling station, and then filed suit against the VRA. None of the states covered by the act, nor any of their elected officials, have ever made such a challenge.

The VRA has repeatedly been found constitutional, and Northwest Austin lost its case in a Federal District Court AND a Circuit Court of Appeals. Since Northwest Austin Municipal Utility District Number One doesn't register voters and uses a county registration roll rather than one of its own, it had no standing to bring the suit because it's not a government entity as defined by law..

The suit, however, gave the Supreme Court the opportunity to find Section 5 unconstitutional. In regard to the nine states and parts of seven others, which include most of the former Confederacy, the Justices remarked that the law's treatment of these states was outdated, and that Congress had acted unconstitutionally by renewing it for 25 years in 2006. The Court felt that this violated the sovereign equality of the states. Justice Kennedy said that the law meant that "…the governments in one (state) are to be less trusted than governments in the others."

Chief Justice Roberts also noted the progress in racial equality in the South, but the Court declined to strike down Section 5, probably because it had already decided against affirmative action in Ricci v. DiStefano, the New Haven fireman's case, finding for plaintiffs claiming "reverse discrimination" that same week. In addition, the US was also trying to

turn world opinion against Iran because of "rigged elections," making it the wrong time to destroy the country's foremost protection for minority voters' rights. But the Justices who upheld Northwest Austin's suit would probably overturn Section 5 if it were politically feasible.

Justice Thomas is of the opinion that obstacles to voting in the South no longer exist, and thus Section 5 should be declared unconstitutional. Justice Roberts concurred, but as Chief Justice Waite did in Santa Clara, Roberts did not make the broader decision and instead wrote "whether conditions continue to justify such legislation is a difficult constitutional question **we do not answer today."** (emphasis added) The Court ruled narrowly that Northwest Austin Municipal Utility District **was** a government entity after all, and as such entitled to apply for exemption. They overturned the lower court's ruling and authorized the Utility District to seek exemption from the Justice Department. Since it now has standing as a government entity, it can bring suit against the constitutionality of Section 5 of the VRA.

The majority of voting-age Blacks in the South were disenfranchised by Jim Crow laws for a hundred years after the Civil War with poll taxes, literacy tests and the grandfather clause – the voter's grandfather had to have been a registered voter. The Justices on this Court lived through the struggle for civil rights and they **know** that racial discrimination and injustice are not relics, but still a daily experience for millions of Americans. The other four Justices didn't mention this, even to file a concurring opinion defending Section 5's constitutionality, or to mediate the majority's harsh opinion. None of them spoke in support of VRA, and instead settled for a coward's compromise that buys time for the other five to attack civil rights legislation at a more opportune moment.

And in light of Florida's recount of Election 2000, it is disingenuous in the extreme to say that obstacles to voting no longer exist in the South. The voting rights of Blacks and other minorities are under increasing and methodical attacks not only in the South, but across America.

The suppression of minority voters in Florida led to the Supreme Court's installation of George W. Bush as president at a time when Justice Roberts was Florida Governor Jeb Bush's legal council. For the first time in US history, the Court reversed a popular vote (in a narrow 5-4 decision) to install its preferred candidate. And in 2005, Governor Bush's brother, President George W. Bush, who lost the popular vote, appointed Roberts to the Supreme Court.

Greg Palast reports that in 2000, Florida Secretary of State, Katherine Harris, "in conjunction with Governor Jeb Bush" ordered 57,700 mostly poor Blacks and Hispanics removed from voting registries because they were "identified" as ex-felons, who are ineligible to vote under Florida law. These voters were "disappeared" from voter rolls without verification because their names, gender, birthplace and race matched those belonging to ex-felons who show up as many as 77 times in Florida phone books, e.g. "James Lee."

Over five million US citizens are barred from voting because of prior felony convictions, many for non-violent drug offenses. And "notably, lifetime loss of citizenship is imposed by only seven states of the Old Confederacy under laws originally created at the behest of the Ku Klux Klan." – Greg Palast

Martin Fagan, a Choicepoint vice president, has admitted that names were listed incorrectly

and purged. Another Choicepoint VP, James Lee, said Florida officials told DBT/Choicepoint they could purge names by dropping middle initials and suffixes, and adding nicknames and aliases. Names could be reversed, e.g., James Lee and Lee James.

Jeb Bush ordered other obstructive practices in minority districts: missing and uncounted ballot boxes; asking for two photo IDs when Florida law requires one; voters turned away and directed to vote elsewhere; voters never mailed registration cards; voters told they had showed up too late and that the polls were closed and; placing state troopers near polling stations to intimidate and delay voters by setting up road blocks and searching cars.

In 2002, the Help America Vote Act (HAVA) ushered in a voting process using electronic voting machines owned, programmed, operated and controlled by corporations, **not** open to public scrutiny as the law demands. Over 80% of Americans votes are cast and counted this way. "Those who cast the vote decide nothing.. Those who count the vote decide everything." – Joseph Stalin

By 2004, Ohio's vote was probably tipped by more sophisticated means of voter suppression like caging lists, which challenge voters' right to cast a ballot on the grounds that they don't legally reside at their registered address. Mass, direct mailings are made to eligible voters, usually from the opposite party, and often in minority neighborhoods. When this First Class mail, stamped "Do Not Forward," is returned as undeliverable, lists are complied of people who've moved, students away at college, soldiers overseas, and those whose names and/or addresses contained "mistakes" on the mailing labels themselves.

Some states have passed laws requiring a photo ID in order to vote, which the Supreme Court deems politically neutral, but which purges those least likely to have photo IDs – the poor, minorities and immigrants.

You may think that the Constitution can only be amended by a two-thirds vote of Congress subject to approval by three-quarters of the states, but you "think wrong." Five Supreme Court Justices can radically alter our founding document just by voting as a bloc, and change the Constitution, completing the transfer of individual, constitutional rights from the people to corporations. Citizens United v. Federal Elections Commission and Northwest Austin Municipal Utility District Number One v. Holder are the means to the end of the slow motion murder of an experiment in democracy begun over 230 years ago, which declared that no one is above the law, and that the people, not corporations, possess unalienable rights under the law.

Corporations will make our electoral process their private property. Laws not in the corporate interest will be struck down: minimum wages; maximum hours; unemployment insurance; child labor; safety standards; pollutions caps; unionization; tort laws; bankruptcy; usury; Medicaid; Medicare, Social Security; and any and all restrictions on corporate "activities." And with every purchased election, their power will concentrate. Their influence will become more widespread. As more corporate candidates take office and enact corporate-friendly laws and regulations, government will become more anti-people.

And once the Supreme Court makes it "legal," who will say it's not right? If it wasn't, how could it be a law? Our own government wouldn't sell us down the river to corporate slave masters. **That** would never happen. That's **exactly** what Jefferson and Madison **said** would happen.

Corporations, property with full constitutional rights, will become persons, and the people of the United States, persons, will become their property, with no rights at all. Corporations will be more powerful than the medieval Church, King George the Third, or even the world's first transnational corporation, the East India Company, whose property our revolutionary ancestors pitched into Boston Harbor. Without a revolution to obliterate "corporate personhood," we might just as well throw the illusion of freedom and democracy into the harbor with the tea.

The people, if not their legislators, must recognize this pincer play for what it is, a plan to shut off the supply of democracy to the citizens trapped in the middle, as rule by an "opulent minority" is instituted and its shackles are shut as tightly as the shackles of slavery the Fourteenth Amendment was meant to throw off.

As the Constitution was being ratified, states were writing controls into the charters of the corporations they created. Americans, leery of corporate power, such as that of the British East India Company, acted through their state legislatures to create charters only for the purpose of serving the general welfare. Each charter was granted only for a specific purpose, and gave corporations limited privileges and no inherent rights.

Under the Constitution, corporations had no rights. They only had privileges granted them by the people of their chartering states, because there are only two parties to the Constitution, the people, who are sovereign and have constitutional rights, and the government, which is accountable to the people and has duties it must perform to their satisfaction.

The word "corporation" appears nowhere in the Constitution. Corporations are a creation of the government, and government must perform to the satisfaction of the people. This meant that property, e.g. corporations, had to discontinue being a creation of the government, which serves the people, and in effect, **become** people, entitled to the rights of the sovereign under the Constitution, if wealthy corporate shareholders were to continue minority rule.

And since Federalists blocked Jefferson's inclusion of an eleventh amendment, the "restriction of monopolies," from the Bill of Rights because states already had laws banning them, an "opulent minority" was able to use the Supreme Court as a scalpel to excise the protections and immunities of the Fourteenth Amendment from human beings and transplant them into their property, the corporations. This allowed corporate shareholders to assume control of the US government through their property as it exercised the constitutional rights of US citizens, and further, assumed the protections and immunities of the entire Bill of Rights under the mantle of "corporate personhood."

Corporations have been a successful means to minority rule, because this form of property is a stunningly efficient means of accumulating and concentrating wealth, which is then translated into political power. Democracy disperses power. Corporations concentrate power. And property **as** power, accumulated in the hands of a few, inevitably becomes power over the majority.

But there is no such thing as "corporate personhood." Congress has never passed a law that gives corporations the same rights as citizens. There has **never** been a court – state,

federal or supreme – that decided corporations are "persons" rather than "artificial persons." And those courts were wise not to have done so, since such a decision would have forced them to explain why a business mechanism for the creation of profit, a corporation, should be entitled to the same rights as living, breathing US citizens.

In Austin, Justice Rehnquist referred to Santa Clara County v. Southern Pacific railroad when he observed that corporations were **not** in 1886 recognized to have due process rights even though **this principle has never really been questioned.** Let's question it.

> "Freedom is participation in power." – Marcus Tullius Cicero

Power. To the people.

Cold Case Democracy Part One – Breaking and Entering

Cold Case Democracy and the Doctrine of "Corporate Personhood" Part II: Smash and Grab

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