

The DEFINITIVE GUIDE to OVERTURNING Citizens United



JEFFREY D. CLEMENTS

CORPORATIONS
ARE
NOT
PEOPLE

**WHY THEY HAVE MORE RIGHTS THAN YOU DO
AND WHAT YOU CAN DO ABOUT IT**



FOREWORD BY BILL MOYERS



An Excerpt From

***Corporations Are Not People:
Why They Have More Rights Than You Do and What You Can Do
About It***

by Jeffrey D. Clements

Published by Berrett-Koehler Publishers

CONTENTS

Preface	vii
Foreword: <i>Fighting Back</i> , by <i>Bill Moyers</i>	xi
Introduction: What's at Stake	1
1 American Democracy Works, and Corporations Fight Back	7
2 Corporations Are Not People—and They Make Lousy Parents	31
3 If Corporations Are Not People, What Are They?	57
4 Corporations Don't Vote; They Don't Have To	79
5 Did Corporate Power Destroy the Working American Economy?	109
6 Corporations Can't Love	127
7 Restoring Democracy and Republican Government	145
Resources	165
The People's Rights Amendment	
The People's Rights Amendment Resolution	

Frequently Asked Questions About the People's
Rights Amendment

Organizations and Links for Taking Action

Recommended Reading

Free Speech for People and Appalachian Voices'
Request for Revocation of Massey Energy Company
Charters

Notes	189
Index	209
About the Author	217

PREFACE

Of course corporations are not people. Do we really need a book about that obvious truth? Unfortunately, we do.

After the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* in 2010, the identity of corporations and their place in our government of the people is not so obvious anymore, at least not to the Supreme Court and to the armies of corporate lawyers pushing for more corporate constitutional rights. And the fact that corporations are not people does not seem to be obvious to too many cowed and trembling lawmakers at all levels of government. There are exceptions, to be sure, but in the face of wildly unbalanced corporate money and influence, too few of our elected officials stand with conviction and firmness to state the obvious about corporations in defense of the public interest.

Citizens United is the biggest and most radical (to use a word from the dissent of Justice Stevens) decision in a regular series of recent Supreme Court decisions in favor of corporations. In *Citizens United*, the Supreme Court overturned decades of precedent, reversed a century of legislative effort to keep corporate money from corrupting democracy, and upended the American ideal that we are a government of people rather than a government of corporate wealth. The decision, in many ways, symbolizes how far off track we have fallen from our ideal of the American Republic, governed by the people.

In the pages that follow, I hope to show what *Citizens United* is all about, where it came from, and what I think this triumph of corporate power means for you and for all Americans. Much of the book is about what I see as the devastating effect of unbalanced corporate power, sustained and strengthened by a deliberate, organized, and extremely well funded campaign to transform—I would say, pervert—our Bill of Rights into a charter for corporations as much and even more than for people.

I also hope to show, however, why we do not have to leave it at that depressing juncture. As I describe in Chapter Seven, thanks to the mechanism of constitutional amendment that has come through before when our democracy is on the line, we can fight back to restore government of the people and to save our country. Thousands of people have started that work already, working for the People's Rights Amendment as the Twenty-Eighth Amendment to the Constitution. I hope that you will join us; the Resources section that follows Chapter Seven offers some ways you can do that.

Many people across the country have taken up the effort to preserve our nation and world against unbalanced corporate power and have shared their ideas, time, spirit, and hard work with me. I hope that all of them will know how much they have influenced this book and how grateful I am, even if I could not list everyone here.

Bill Moyers is at the top of the list of a few who deserve special mention. Bill has been a hero and a teacher for me and for so many Americans. He tells the truth. Calmly and clearly, to be sure, but make no mistake, he tells the truth, out loud for all to hear. He never gives up on the journey of America and of humanity, and his curiosity, determination, and grace make that journey live for all of us. I cannot say how grateful and honored I am to have him write the Foreword to this book.

I am blessed to be part of the Clements family. Thank you to Marilyn Clements and this wonderful extended clan of opinionated, smart, loving, patriotic people, who work hard for the good, stand for principle, and believe in writing and in books. They put in hours helping me to make this one better.

I am deeply appreciative of so many who early on understood the danger of *Citizens United* and corporate power, who have worked so hard, and who are bringing such hope and purpose to the cause of liberty and democracy. They have picked up the constitutional amendment banner used so well by our forefathers and foremothers. These modern-day heroes do not accept that our generation is less determined or less true to the American cause of freedom and democracy than those who came before. They reject defeatism. They are standing for people's rights and against corporate rights, and they have inspired much of this book.

One of these heroes is John Bonifaz, a determined visionary and leader. On top of launching Free Speech for People, a nationwide campaign to overturn *Citizens United*, he took the time to read drafts and helped make this book better than it would have been. I thank John and all of the friends and supporters who are helping move Free Speech for People and the People's Rights Amendment forward.

Many others generously shared their time, ideas, comments, and criticisms. My colleague Gwen Stowe, associate at Free Speech for People and manager at Clements Law Office, LLC, made far more contributions to all aspects of this project than I can list. Pam Kogut, my old friend and colleague, first at the Massachusetts attorney general's office and now at Clements Law Office, LLC, provided smart edits and wise suggestions. I am lucky to work with Pam and Gwen.

I also am grateful for the terrific work of Neal Maillet and the Berrett-Kohler team and for many people who provided comments, suggestions, and correction of errors, including David Korten,

Daniel Greenwood, Rob Ellman, Shauna Shames, Kristen Mousalli, Ariel Jolicoeur, Ted Nace, Steve Cobble, and David Swanson. I know that the final product is not everything they might have thought possible, but I also know that it is better thanks to them. Thanks, too, to Thom Hartmann.

Finally, as always, my loving gratitude to Nancy, Will, Sophie, and Ben.

Jeff Clements
Concord, Massachusetts
October 2011

FOREWORD

FIGHTING BACK

Bill Moyers

Rarely have so few imposed such damage on so many. When five conservative members of the Supreme Court handed for-profit corporations the right to secretly flood political campaigns with tidal waves of cash on the eve of an election, they moved America closer to outright plutocracy, where political power derived from wealth is devoted to the protection of wealth. It is now official: Just as they have adorned our athletic stadiums and multiple places of public assembly with their logos, corporations can officially put their brand on the government of the United States as well as the executive, legislative, and judicial branches of the fifty states.

The decision in *Citizens United v. Federal Election Commission* giving “artificial entities” the same rights of “free speech” as living, breathing human beings will likely prove as infamous as the *Dred Scott* ruling of 1857 that opened the unsettled territories of the United States to slavery whether future inhabitants wanted it or not. It took a civil war and another hundred years of enforced segregation and deprivation before the effects of that ruling were

finally exorcised from our laws. God spare us civil strife over the pernicious consequences of *Citizens United*, but unless citizens stand their ground, America will divide even more swiftly into winners and losers with little pity for the latter. *Citizens United* is but the latest battle in the class war waged for thirty years from the top down by the corporate and political right. Instead of creating a fair and level playing field for all, government would become the agent of the powerful and privileged. Public institutions, laws, and regulations, as well as the ideas, norms, and beliefs that aimed to protect the common good and helped create America's iconic middle class, would become increasingly vulnerable. The Nobel Laureate economist Robert Solow succinctly summed up results: "The redistribution of wealth in favor of the wealthy and of power in favor of the powerful." In the wake of *Citizens United*, popular resistance is all that can prevent the richest economic interests in the country from buying the democratic process lock, stock, and barrel.

America has a long record of conflict with corporations. Wealth acquired under capitalism is in and of itself no enemy to democracy, but wealth armed with political power—power to choke off opportunities for others to rise, power to subvert public purposes and deny public needs—is a proven danger to the "general welfare" proclaimed in the Preamble to the Constitution as one of the justifications for America's existence.

In its founding era, Alexander Hamilton created a financial system for our infant republic that mixed subsidies, tariffs, and a central bank to establish a viable economy and sound public credit. James Madison and Thomas Jefferson warned Americans to beware of the political ambitions of that system's managerial class. Madison feared that the "spirit of speculation" would lead to "a government operating by corrupt influence, substituting the motive of private interest in place of public duty." Jefferson hoped that "we shall crush in its birth the aristocracy of our monied corporations which dare

already to challenge our government to a trial of strength and [to] bid defiance to the laws of our country." Radical ideas? Class warfare? The voters didn't think so. In 1800, they made Jefferson the third president and then reelected him, and in 1808 they put Madison in the White House for the next eight years.

Andrew Jackson, the overwhelming people's choice of 1828, vetoed the rechartering of the Second Bank of the United States in the summer of 1832. Twenty percent of its stock was government-owned; the rest was held by private investors, some of them foreigners and all of them wealthy. Jackson argued that the bank's official connections and size gave it unfair advantages over local competition. In his veto message, he said: "[This act] seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government. . . . It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes." Four months later, Jackson was easily reelected in a decisive victory over plutocracy.

The predators roared back in the Gilded Age that followed the Civil War. Corruption born of the lust for money produced what one historian described as "the morals of a gashouse gang." Judges, state legislators, the parties that selected them and the editors who supported them were purchased as easily as ale at the local pub. Lobbyists roamed the halls of Congress proffering gifts of cash, railroad passes, and fancy entertainments. The U.S. Senate became a "millionaires' club." With government on the auction block, the notion of the "general welfare" wound up on the trash heap; grotesque inequality and poverty festered under the gilding. Sound familiar?

Then came a judicial earthquake. In 1886, a conservative Supreme Court conferred the divine gift of life on the Southern Pacific Railroad and by extension to all other corporations. The

railroad was declared to be a “person,” protected by the recently enacted Fourteenth Amendment, which said that no person should be deprived of “life, liberty or property without due process of law.” Never mind that the amendment was enacted to protect the rights of freed slaves who were now U.S. citizens. Never mind that a corporation possessed neither a body to be kicked nor a soul to be damned (or saved!). The Court decided that it had the same rights of “personhood” as a walking, talking citizen and was entitled to enjoy every liberty protected by the Constitution that flesh-and-blood individuals could claim, even though it did not share their disadvantage of being mortal. It could move where it chose, buy any kind of property it chose, and select its directors and stockholders from anywhere it chose. Welcome to unregulated multinational conglomerates, although unforeseen at the time. Welcome to tax shelters, at home and offshore, and to subsidies galore, paid for by the taxes of unsuspecting working people. Corporations were endowed with the rights of “personhood” but exempted from the responsibilities of citizenship.

That’s the doctrine picked up and dusted off by the John Roberts Court in its ruling on *Citizens United*. Ignoring a century of modifying precedent, the court gave our corporate sovereigns a “sky’s the limit” right to pour money into political campaigns for the purpose of influencing the outcome. And to do so without public disclosure. We might as well say farewell to the very idea of fair play. Farewell, too, to representative government “of, by, and for the people.”

Unless.

Unless “We, the People”—flesh-and-blood humans, outraged at the selling off of our government—fight back.

It’s been done before. As my friend and longtime colleague, the historian Bernard Weisberger, wrote recently, the Supreme Court remained a procorporate conservative fortress for the next

fifty years after the Southern Pacific decision. Decade after decade it struck down laws aimed to share power with the citizenry and to promote “the general welfare.” In 1895, it declared unconstitutional a measure providing for an income tax and gutted the Sherman Antitrust Act by finding a loophole for a sugar trust. In 1905, it killed a New York state law limiting working hours. In 1917, it did likewise to a prohibition against child labor. In 1923, it wiped out another law that set minimum wages for women. In 1935 and 1936, it struck down early New Deal recovery acts.

But in the face of such discouragement, embattled citizens refused to give up. Into their hearts, wrote the progressive Kansas journalist William Allen White, “had come a sense that their civilization needed recasting, that the government had fallen into the hands of self-seekers, that a new relationship should be established between the haves and the have-nots.” Not content merely to wring their hands and cry “Woe is us,” everyday citizens researched the issues, organized public events to educate their neighbors, held rallies, made speeches, petitioned and canvassed, marched and exhorted. They would elect the twentieth-century governments that restored “the general welfare” as a pillar of American democracy, setting in place legally ordained minimum wages, maximum working hours, child labor laws, workmen’s safety and compensation laws, pure foods and safe drugs, Social Security and Medicare, and rules to promote competitive rather than monopolistic financial and business markets.

The social contract that emerged from these victories is part and parcel of the “general welfare” to which the Founders had dedicated our Constitution. The corporate and political right seeks now to weaken and ultimately destroy it. Thanks to their ideological kin on the Supreme Court, they can attack the social contract using their abundant resources of wealth funneled—clandestinely—into political campaigns. During the fall elections

of 2010, the first after the *Citizens United* decision, corporate front groups spent \$126 million while hiding the identities of the donors, according to the Sunlight Foundation. The United States Chamber of Commerce, which touts itself as a “main street” grassroots organization, draws most of its funds from about a hundred businesses, including such “main street” sources as BP, Exxon-Mobil, JPMorgan Chase, Massey Coal, Pfizer, Shell, Aetna, and Alcoa. The ink was hardly dry on the *Citizens United* decision when the Chamber organized a covertly funded front and fired volley after volley of missiles, in the form of political ads, into the 2010 campaigns, eventually spending approximately \$75 million. Another corporate cover group—the Americans Action Network—spent over \$26 million of undisclosed corporate money in six Senate races and 28 House of Representative elections. And “Crossroads GPS” seized on *Citizens United* to raise and spend at least \$17 million that NBC News said came from “a small circle of extremely wealthy Wall Street hedge fund and private equity moguls,” all determined to water down the financial reforms designed to avoid a collapse of the financial system that their own greed and reckless speculation had helped bring on. As I write in the summer of 2011, the *New York Times* reports that efforts to thwart serious reforms are succeeding. The populist editor Jim Hightower concludes that today’s proponents of corporate plutocracy “have simply elevated money itself above votes, establishing cold, hard cash as the real coin of political power. The more you spend on politics, the bigger your voice is in government, making the vast vaults of billionaires and corporations far superior to the voices of mere voters.”

Against such odds, discouragement comes easily. But if the generations before us had given up, slaves would be waiting on our tables and picking our crops, women would be turned back at the voting booths, and it would be a crime for workers to orga-

nize. Like our forebears, we will not fix the broken promise of America—the promise of “life, liberty, and the pursuit of happiness” for all our citizens, not just the powerful and privileged—if we throw in the proverbial towel. Surrendering to plutocracy is not an option. Confronting a moment in our history that is much like the one Lincoln faced—when “we can nobly save or meanly lose the last best hope on earth”—we must fight back against the forces that are pouring dirty money into the political system, turning it into a sewer.

How to fight back is the message of this book. Jeffrey Clements saw corporate behavior up close during two stints as assistant attorney general in Massachusetts, litigating against the tobacco industry, enforcing fair trade practices, and leading more than one hundred attorneys and staff responsible for consumer and environmental protection, antitrust practices, and the oversight of health care, insurance, and financial services. He came away from the experience repeating to himself this indelible truth: “Corporations are not people.” Try it yourself: “Corporations are not people.” Again: “Corporations are not people.” You are now ready to join what Clements believes is the most promising way to counter *Citizens United*: a campaign for a constitutional amendment affirming that free speech and democracy are for people and that corporations are not people. Impossible? Not at all, says Clements. We have already amended the Constitution twenty-seven times. Amendment campaigns are how we have always made the promise of equality and liberty more real. Difficult? Of course; as Frederick Douglass taught us, power concedes nothing without a struggle. To contend with power, Clements and his colleague John Bonifaz founded Free Speech for People, a nationwide nonpartisan effort to overturn *Citizens United* and corporate rights doctrines that unduly leverage corporate economic power into political power. What Clements calls the People’s Rights

Amendment could be our best hope to save the “great American experiment.”

To find out why, read on, and as you read, keep in mind the words of Theodore Roosevelt, a Republican, who a century ago stood up to the mighty combines of wealth and power that were buying up our government and called on Americans of all persuasions to join him in opposing the “naked robbery” of the public’s trust:

It is not a partisan issue; it is more than a political issue; it is a great moral issue. If we condone political theft, if we do not resent the kinds of wrong and injustice that injuriously affect the whole nation, not merely our democratic form of government but our civilization itself cannot endure.

Introduction

What's at Stake

America's story is one of defiant struggle against the odds for an improbable vision: that all people, created and born free and equal, can live and govern together "in the pursuit of happiness." This dream of a society of free people with equal rights, where people govern themselves, was unlikely indeed in the eighteenth century. In a world of empires, governed by royalty and divided by class, and in our own country, with millions enslaved, where women were considered the property of their husbands, and where land ownership was considered a prerequisite to participation in government, the pursuit—let alone the fulfillment—of this vision was far-fetched indeed.

Yet we Americans never let that vision go, despite dark days. In generation after generation, for more than two centuries, the power of this dream drove us and inspired the world. Despite all of the contradictions, shortcomings, missteps, and failures along the way, this basic American story remains true, and it is an undeniable triumph of the human spirit. Cynics and critics will have their say, but Americans really did come together to defeat the British Empire; to overthrow the evil of slavery and work for justice; to secure

equal voting rights for women; to insist that everyone, not only the wealthy, has an equal vote and voice; to suffer, work, and fight year after year to defeat fascist, communist, fundamentalist, and totalitarian challenges to our vision of democracy, equality, and freedom.

People are free. People are equal. People govern. We have lived by that and died for that, and whenever we fell short, we worked and sacrificed for that, to ensure, as Abraham Lincoln said in one of our darkest moments, “that government of the people, by the people, for the people shall not perish from the Earth.”

To triumph again over powerful enemies of human equality, dignity, and freedom in our generation, we must properly identify the challenge and bring clarity of thinking and action to making our republic work again. As so often before, success and struggle begin with the simplest of propositions: Corporations are not people.

On January 20, 2010, the Supreme Court of the United States concluded, in effect, that corporations are people and have the people’s First Amendment free speech rights. According to the Supreme Court in *Citizens United v. Federal Election Commission*, we Americans cannot prevent corporations from using billions of dollars to control who wins and who loses elections or to control what our representatives in Congress and in state and local government do or do not do. In one stroke, the Court erased a century or more of bipartisan law and two previous Supreme Court rulings that affirmed the right, if not the duty, of the people to regulate corporate political spending to preserve the integrity of American democracy. Eight months after *Citizens United*, we had the most expensive election in American history, with nearly \$4 billion, much of it secret corporate money channeled and laundered through front groups, spent to define who was good, who was bad, and what issues mattered. Nearly six out of ten eligible American voters did not even bother to vote.

Citizens United is not merely a mistake easily corrected, nor is the case simply about campaign finance or money in politics. *Citi-*

zens United is a corporate power case masquerading as a free speech case. In many ways, the decision was less a break from the recent past than a proclamation about the sad reality of corporate power in America. The Court's declaration in *Citizens United* that corporations have the same rights as people must strike most Americans as bizarre. To the five justices in the majority and to the corporate legal movement out of which they have come, however, it was more like a victory lap or an end zone dance for the three-decade-long campaign for corporate power and corporate rights.

This campaign, begun in the 1970s, had already succeeded in creating a corporate trump card to strike down federal, state, and local laws enacted for the public's benefit. Even before *Citizens United*, the fabrication of corporate rights and the reality of corporate power controlled economic, energy, environmental, health, budget, debt, food, agriculture, and foreign policy in America.

The results? Massive job outsourcing abroad; destruction of our manufacturing capacity; wage stagnation for the vast majority of Americans and unprecedented enrichment of the very few; uncontrolled military spending and endless wars to secure energy supplies from a region from which we should have cut our dependence long ago; out-of-control health care spending at the same time that millions of people cannot get health care at all; bloated and unsustainable budgets and debt at every level of government; national and global environmental crisis; loss of wilderness and open land, and the takeover of public hunting and fishing grounds; chain store sprawl and gutting of local economies and communities; obesity, asthma, and public health epidemics; and a growing sense that the connection between Americans and our government has been lost.

Bill Moyers, the acclaimed journalist, has been an optimist for much of his legendary career as he explored faith and reason, war and peace, and the progress of American democracy. Here is

what he said in Washington in late 2010:

Democracy in America has been a series of narrow escapes, and we may be running out of luck. The most widely shared assumption of our journey as Americans has been the idea of progress, the belief that the present is “better” than the past and things will keep getting better in the future. No matter what befalls us—we keep telling ourselves—“the system works.”

All bets are now off. The great American experiment in creating a different future together has come down to the worship of individual cunning in the pursuit of wealth and power, with both political parties cravenly subservient to Big Money. The result is an economy that no longer serves ordinary men and women and their families. This, I believe, accounts for so much of the profound sense of betrayal in the country, for the despair about the future. . . .

America as a shared project is shattered, leaving us increasingly isolated in our separate realities.¹

We do not have to live with this. We can put the American project back together again.

First, though, we need to see where *Citizens United* came from and how much we have lost to the triumph of corporate power. Most of the first six chapters of this book examine these themes from different perspectives. In Chapter Three, I digress to examine what a corporation actually is as a matter of law and fact. This may be a digression, but it lies at the heart of why corporations can have no constitutional rights superior to the rights of the American people to make laws governing corporations. Corporations are not merely private entities, owing no duties to the public. Corporations are legal creations of government.

I close with three essential steps to roll back corporate dominance of government: (1) a twenty-eighth amendment to the Con-

stitution that will overturn *Citizens United* and corporate rights and restore people's rights; (2) corporate accountability and charter reform to ensure that corporations better reflect the public policy reasons for which we allow the legal benefits of incorporation, such as limited liability, in the first place; and (3) election law reform, including increased public funding, greater transparency, and an end to legal political bribery.



Citizens United confronts us again with the basic question of American democracy—what do we mean when we say, as we do in the opening words of the Constitution, “We, the People”? That question drives the central narrative of the American story, and it is why a constitutional amendment campaign to reverse *Citizens United* is so important now.

Amendment campaigns are how we make the American vision of equality and liberty a reality. Amendment campaigns are how we accomplished much that we now take for granted:

- All people are equal.
- Every citizen of every gender, race, and creed gets to vote and participate in our society.
- Women are equal and may vote just as men vote.
- The poor can vote, even if they don't have money for a poll tax.
- Millions of men and women who have lived eighteen, nineteen, and twenty years, old enough to die for their country in war, may not be barred from voting.
- We can, if we, the people, choose to do so, enact progressive income taxes and not place the tax burden only on middle-class and working families.
- We elect the individuals who serve in the U.S. Senate, rather than watch from the sidelines while corporate-dominated political bosses appoint them.

Not one of these principles was established without Americans working for and winning constitutional amendments.

Now we need to work together again, to campaign for a fundamental proposition, encourage a national conversation, and force votes in towns and cities, state legislatures, and Congress, so that people and our representatives state where they stand on this question of our time: Must the American people cede our rights and our government to global corporations? I hope this book will show why this question is so important and how Americans can succeed in restoring our free republic, with equality for all.

Finally, a word about nomenclature. I am not “anticorporate,” and this book is not “anticorporate,” whatever that means. When I refer to “corporations” and “corporate power” and the like, I am talking about large, global or transnational corporations. Size matters. Complexity and power matter. Whether corporations operate in the economic sphere without dominating the political sphere matters.

Thousands and thousands of corporations in America are just like the corporation I set up for my law firm and just like the kinds of corporations that you may have set up or worked in. They are convenient legal structures for businesses to make economic activity more efficient, productive, flexible, and, we hope, profitable (to be sure, I am not “antiprofit” either).

If I am “anti” anything, I am opposed to any force that takes God-given rights away from people and threatens one of the most remarkable runs of democracy and republican government in the history of humanity. Today that force is the combination of massive and insufficiently controlled global corporations. To succeed in making government of the people real in our generation, we will need to restore our right and duty to check, balance, and restrain that power.

Chapter One

American Democracy Works, and Corporations Fight Back

In 1838, a quarter-century before he became the nation's sixteenth president, a twenty-nine-year-old Abraham Lincoln stepped up to speak at the Young Men's Lyceum in Springfield, Illinois. He spoke about what was to become the cause of his life: the preservation of that great American contribution to the human story, government of, for, and by the people. He insisted that the success or failure of the American experiment was up to us. "If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen, we must live through all time, or die by suicide."¹

Lincoln's generation of Americans, and every generation since, has faced daunting questions of whether "destruction be our lot," and we certainly have our share today. Most people can point to a host of complex and related reasons for rising anxiety about our future. Global and national environmental crises seem relentless and increasingly related to energy, economic, military, and food crises. Our unsustainable debt and budgets—national, state, local, family, personal—seem beyond control, reflecting an economy that has not generated significant wage growth in a

generation. We have been locked in faraway wars for more than a decade, at war in one form or another for a half-century. Despite our victory over totalitarian communism, we spend more on our military than all other countries combined. We, the descendants of republicans with great suspicion about standing armies, now maintain a costly military empire across more than one hundred countries. On top of all of this and more, too many people now doubt that we are, in fact, a government of the people, and they no longer believe in their hearts that democracy works or that our government responds to what the people want.

We can point to an array of causes, and we can point fingers at each other, but the root of many of these related problems is our collective failure to do what generations of Americans before us did: choose to take responsibility as citizens to manage and control corporate power in our nation. We have lost sight of the implications of the astonishing global wealth and power of transnational corporations. The goals of these corporations do not concern what is best for people, the nation, and the globe.² The agenda of the largest corporations will never be the agenda of the American family and the American community. Yet the corporate agenda is now the dominant policy agenda at home and across the world.

Citizens United v. Federal Election Commission

In 2010, in *Citizens United v. Federal Election Commission*, the U.S. Supreme Court proclaimed that the American people are not permitted to determine how much control corporations may have over elections and lawmakers. The Court, in a 5–4 decision, struck down as unconstitutional a federal election law designed to prevent corporations from dominating the outcome of elections. This law was the Bipartisan Campaign Reform Act (also known

as McCain-Feingold, after its Republican and Democratic sponsors). The Bipartisan Campaign Reform Act banned “electioneering” spending by corporations—and only corporations—for or against specific candidates within sixty days of a federal election. The law was intended to prevent corporations from bypassing a longstanding prohibition on corporate political contributions to candidates, passed in 1907.

The case is called *Citizens United* because a Virginia nonprofit corporation by that name sued the Federal Election Commission to challenge the corporate spending restriction in the Bipartisan Campaign Reform Act. Citizens United, the corporation, wished to use its corporate money and donations from for-profit corporations to make and distribute what the Court described as a “feature-length advertisement” against Hillary Clinton, who was running for president when the case began. Further, Citizens United sought to do this within the sixty-day period before an election when the law restricted corporate spending on electioneering activity. According to Citizens United, the law violated the First Amendment right of free speech because it prevented Citizens United, a not-for-profit corporation, from engaging in “electioneering activity” and for-profit corporations from contributing to Citizens United’s electioneering activity.

Of course, people are free to make a feature-length advertisement attacking a powerful senator running for president, if that’s what people wish to do. Nor is anything wrong with people pooling their money to do the same thing. That’s essential for political participation. People contribute all the time to organizations, associations, political parties, political action committees and other political committees. At first blush, the background to the case seemed to warrant concern about government restrictions on the free ability of people to pool resources to advocate views.

The Court majority in *Citizens United* was not content to leave the case at first blush. Instead, they saw an opportunity to make new law and to throw out a century of law they thought too restrictive of corporations. In the end, they effectively proclaimed that *all* corporations have a right to spend unlimited money in any American election—federal, state, local, judicial.

The Supreme Court had rejected this argument only a few years earlier, when Justices William Rehnquist and Sandra Day O'Connor were still on the Court. In 2003, in the case of *McConnell v. Federal Election Commission*, the Court ruled that the very same corporate spending provision in the McCain-Feingold law did *not* violate the First Amendment. In *McConnell*, the Court agreed that Congress may make different election spending rules for corporations than for people. The Court in *McConnell* followed the 1990 case of *Michigan Chamber of Commerce v. Austin*, in which another majority of the Court had ruled that corporate money, aggregated with advantages that come from the government, is not the same as people's money pooled together. Corporate spending in elections can be restricted because government creates the advantages for corporations to make them effective in the economic sphere, and the same advantages pose dangers in the political sphere.

Now in *Citizens United*, the Court, with the additions of a new chief justice, John Roberts, and a new justice, Samuel Alito, threw out *McConnell* and *Austin*. The *Citizens United* Court said its earlier decisions were wrong. The Court struck down the McCain-Feingold law as a violation of free speech rights and invited billions of corporate dollars into American elections.

Justice Anthony Kennedy wrote the opinion in *Citizens United* for the Court. At first, Justice Kennedy's opinion sounds like a ringing defense of free speech and American democracy. He writes that the government may not "ban speech." Yes! All "speak-

ers” must be allowed and no “voices” may be silenced. *Yes!* The government cannot restrict a “disadvantaged person or class” from speech. *Yes!* All “citizens, or associations of citizens,” must have an unfettered right to get their views about candidates or anything else out to the people. *Of course!*

But wait. Who are these “voices,” “speakers” and “disadvantaged persons”? They are corporations, particularly global corporations with *trillions* of dollars in revenue and profits. And what was this onerous “ban on speech”? A rather weak law that said corporations may not, within sixty days of an election, spend corporate “general treasury” money to support or attack candidates for federal office. That’s it.

The Court announced its decision on a cold January day in 2010 when most Americans were anxious about millions of job losses, angered by national debt and massive deficits deepened by corporate bailouts, and worried about our military and global strength overstretched by repeated distant wars while China, Germany, and other economic powerhouses at peace charged ahead. Now the Supreme Court says corporations are “disadvantaged persons” with “rights” that trump and invalidate our laws?

Since the decision, *Citizens United* has been widely recognized as a notorious and dangerous mistake by the Court. First, the four dissenting justices on the Court, led by eighty-nine-year-old Justice John Paul Stevens, sounded an alarm. Justice Stevens’s ninety-page dissent, among his last work before retiring, may be his greatest legacy.

Stevens, born and raised in Chicago, had enlisted in the U.S. Navy on December 6, 1941, the day before the Japanese attack on Pearl Harbor, and received the Bronze Star for his service in World War II. He then began a twenty-five-year career as a lawyer and represented numerous corporations in antitrust cases. In 1969, Stevens led the investigation and prosecution of corrupt

judges in Illinois and was hailed for his fair, honest, and determined approach. A Republican, he was appointed to the Court by President Gerald Ford in 1975. It would be difficult to find a more honest, moderate, and balanced judge.

When the justices assembled to announce the *Citizens United* decision, Stevens took the unusual step of reading his dissent aloud from his seat in the Supreme Court's public chamber. While the reading of the elderly judge at times faltered, his words were unmistakable. Stevens called the Court's action in *Citizens United* a "radical departure from what has been settled First Amendment law." He blasted the Court's conclusion that corporations, "like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster." Justice Stevens said that "glittering generality" obscured the truth about what *Citizens United* really meant for America, already suffering from undue influence of corporate power. Then Justice Stevens said this:

The Framers [of our Constitution] thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare. Unlike our colleagues [on the Supreme Court], they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. . . .

At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few

outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

Justice Stevens and his fellow dissenters on the Court were not alone. President Obama called the decision a “strike at the heart of democracy.” Others, such as Maryland Congresswoman Donna Edwards, called *Citizens United* the worst case since the Supreme Court ruled in the 1856 case of *Dred Scott v. Sanford* that African Americans could not be citizens. Republican Senator John McCain said he was “disappointed,” and conservative Tea Party activists went further. A founder of the Tea Party said, “I have a problem with that. It just allows them to feed the machine. Corporations are not like people. Corporations exist forever; people don’t. Our founding fathers never wanted them; these behemoth organizations that never die. . . . It puts the people at a tremendous disadvantage.”³

Polls showed that more than 75 percent of Independents, Republicans, and Democrats alike rejected the decision. People formed groups such as Free Speech for People and Move to Amend to launch a constitutional amendment campaign to overturn the decision and corporate rights, and more than a million Americans quickly signed petitions calling on Congress to send an amendment to the States for ratification. Several amendment bills were introduced in the House and Senate, and resolutions condemning the decision and calling for a constitutional amendment were introduced in towns, cities, and state across the country.

Why this reaction? Most Americans understand the fundamental truth that corporations are not people and that large corporations already have far too much power in America. The real people are not buying the metaphors sprinkled throughout *Citizens United* and know that corporations are not “speakers” or “disadvantaged persons.” Corporate money is not a “voice.”

this material has been excerpted from

***Corporations Are Not People:
Why They Have More Rights Than You Do and What You Can Do
About It***

by Jeffrey D. Clements

Published by Berrett-Koehler Publishers

Copyright © 2011, All Rights Reserved.

For more information, or to purchase the book,
please visit our website

www.bkconnection.com