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# *Citizens United v. Federal Election Commission*: Income inequality and the future of the American polity

"All questions in democracy [are] questions of money." *Mark Hanna*[i]

A little more than a year ago the Supreme Court handed down its decision in *Citizens United v. Federal Elections Commission*, overturning a longstanding rule that corporations and unions could not legally contribute directly to political campaigns. Many Americans were dismayed. An ABC News/Washington Post poll conducted immediately after the decision found that 80 percent of those polled opposed the court's ruling—65 percent strongly (Langer). With one magisterial phrase, Justice Anthony Kennedy, writing for Chief Justice John Roberts' court, turned its back on history and legal precedent: "This court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption" (Citizens 5). It was as if the court, frustrated by intricate campaign-finance laws, wanted to wash its hands of the whole mess, writing, "Political speech is so ingrained in this country's culture that speakers find ways around campaign finance laws" (Citizens 6).

The decision contrasted starkly against the background of a world political economy in crisis. A "tectonic shift" in global capital flows challenges U.S. hegemony globally, as well as our own narratives of economic progress, middle-class prosperity, and upward mobility. Americans, divided by historic income inequality and stunned by financial scandal, also are disgusted by ever-increasing campaign spending. Most troubling, the majority opinion betrayed an insensitivity or even blindness to the influence of money on political decision-making. The financial crisis that came perilously close to plunging the world into another Great Depression was a reminder that for millions of people the political-economic system was not working.

With *Citizens United* the court reversed a long history of legislative efforts to address the complex relationship between private enterprise and the public welfare in American politics. It's not that corporations and business interests always wear a black

hat. This is not a screed against business. The point is rather that the aims of business, and in contrast, the best interests of the American people often do not overlap. The primary objective of laws regulating corporate campaign contributions was to ensure that both elections and the legislative process itself would not be distorted by those entities that had amassed great amounts of money, that is, social power, and whose ability to speak was therefore far greater than others. In 1976 the Supreme Court, in *Buckley v. Valeo*, ruled that the spending of money in political campaigns was a constitutionally protected form of speech.[ii] Those entities with more money potentially have, therefore, more speech—at least they are capable of more speech, their voices are louder. As for the legislative process, in the past 20 years business has increasingly sought to get its message across directly on Capitol Hill. Retiring or defeated representatives and senators—even our own Pete Hoekstra— frequently accept lucrative positions with lobbying firms in Washington, rather than returning to their districts. The number of lobbyists in Washington doubled in the 2000-2008 period, jumping to roughly 35,000, according to the *Washington Post*. The number of health-care lobbyists alone in 2009 was estimated at 3,300, according to Bloomberg News (Crabtree).

Citizen dissatisfaction with the role large campaign contributions play in politics and governing is widespread (Utter 123). Public-opinion polls perennially show that most Americans look warily on the influence of money in politics and political campaigns (Birnbaum A1, Hasen 43). Indeed, this was the impetus behind the passage of the 2002 Bipartisan Campaign Reform Act, known as McCain-Feingold. The opposing libertarian position argues that campaign finance reform efforts are not only futile, they stymie the legislative process, help to entrench incumbents, abridge constitutionally protected freedom, and concentrate more power among a smaller elite of “media people and others whose skills are directly valuable to a candidate or legislator” (Smith 206).

Broad-based egalitarian concern over the power of concentrated wealth, however, is a part of our revolutionary roots, our nation’s DNA. During the 1920s income inequality was historically high. Income disparities had eased by the mid-20th century, reflecting the massive changes wrought in the American economy and society by the Great Depression and two world wars. By the end of the century, however, income disparities had become seriously skewed. By 2003 the top 1 percent of American

households owned 57.5 percent of corporate wealth. In 1991, it was 38.7 percent (Johnston A9). Many studies show income inequality greater than at any time in our recorded history (Saez). Indeed, income inequality in the United States exceeds that of any other Western nation, and other data show the U.S. income inequality index greater than that of any of the nations in the Organization of Economic Cooperation and Development (Phillips 123). From 1980 to 2005 four-fifths of the total increase in American incomes went to the top 1 percent of American households (Kristof 10). We can no longer lay claim to having the most upwardly mobile society: The United States is now no more upwardly mobile than Western Europe (Levy 43).[iii] This combination of factors presents a problem for our democracy: Wealth is increasingly concentrated. Money equals political speech, and therefore, power. Political speech is becoming increasingly polarized and self-serving. Lobbyists, many of them former representatives and senators, offer powerful ways to influence the legislative process to benefit privately.

Money and American politics

Political campaigns are so expensive that most senators and representatives—even in state legislatures—feel the constant pressure to raise money to pay for their re-election campaigns. In 2010 the average cost to win a Congressional seat was nearly $1.4 million and the average successful Senate race cost over $7 million (Campaign). This drive to accumulate enough money to mount a successful campaign creates a climate in which corruption can take root.[iv]

The tumultuous Progressive Era, from the 1890s through the 1920s, brought reforms—though often without enforcement mechanisms—to America's wide-open political process, including the Sherman Anti-trust Act of 1890.[v] In the 1896 presidential campaign Republican candidate William McKinley amassed a $16 million fund, swollen by corporate contributions, in comparison with Democrat-Populist William Jennings Bryan's paltry $600,000. In the wake of the 1896 campaign, McKinley's successor, Theodore Roosevelt, pursued campaign finance reform—especially after he was criticized for accepting corporate money in his 1904 campaign. "No enemy of free

government [is] more dangerous … and none so insidious," Roosevelt said in his 1905 message to Congress (Beatty).

Early in the 20th century the American lawyer, statesman, and Nobel Prize-winner Elihu Root advocated banning corporate political contributions, arguing that such legislation would "strik[e] at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government" (Cited in *McConnell* 3). In 1907 Congress approved the Tillman Act, which banned corporate campaign contributions. The Publicity Act of 1910 required for the first time that House of Representatives campaign receipts and spending be reported. During World War Two the growing power of labor unions prompted the Smith-Connolly Act, or Wartime Labor Disputes Act, which was aimed at preventing labor unions from using their treasury funds to make political contributions. After the end of World War Two the ban was made permanent as part of the Taft-Hartley Act.[vi]

Money and politics: An unhealthy legacy

The past 50 years have witnessed an array of scandals in which the intersecting interests of political power and what has come to be called the financial-services industry have created ever-larger financial crises and bail-outs (Phillips 105, Harvey 261).[vii] In fact, little has changed despite the enormity of the crisis.[viii] Highly effective lobbying by the financial industry has prevented significant reform, providing us with a case study of the distorting, even corrupting effects of corporate lobbying power. The Securities and Exchange Commission, it must be added, has been ineffective in its role as a financial-industry regulator. In this respect it is not unlike other "captive" regulatory agencies, such as the Federal Aviation Administration or the Food and Drug Administration.

Though we cannot examine the question in detail tonight, financial deregulation, particularly the Gramm–Leach–Bliley Act, also known as the Financial Services Modernization Act of 1999, reversed longstanding rules—such as the Glass-Steagall Act of 1933—that prevented insurance companies, investment banks, and commercial banks from merging. The resulting consolidations of financial services enterprises into firms

that were "too big to fail" played a pivotal role in the crisis, as did under- and unregulated securitization (Sorkin; Posner 270). [ix]

The relationship between lobbyists, senators and congressmen, and corporate interests that brought about the push for sweeping deregulation against the lessons of history proved to be disastrous. The most recent crisis alone prompted a $700 billion federal bailout package and nearly collapsed the world's financial system. American taxpayers shored up disintegrating mega-banks, such as Citigroup, Bank of America, and the federal government had no realistic choice but to take over the nation's largest insurance company, AIG, and Washington Mutual, the nation's biggest savings and loan.[x] The finance, insurance, and real estate industry spent $223 million on lobbying in the first half of 2009 alone, second only to the health-care industry (54). In the 1998-2009 period the financial sector spent $3.8 billion, according to the Center for Responsive Politics.

Corporate personhood: A legal fiction?

The foundation of our belief that business corporations even have First Amendment speech rights goes back 125 years to the Supreme Court's 1886 decision, *Santa Clara County v. Southern Pacific Railroad Co*. In that decision, which legal philosopher Morton J. Horwitz has called "puzzling and controversial" the court ruled that a corporation was to be legally regarded as a person under the 14$^{th}$ Amendment and entitled to its protection (Horwitz 67). The 14$^{th}$ Amendment was ratified by Congress in 1868—one of three Reconstruction-era amendments aimed at remaking American society in the wake of the Civil War. The intent of the amendment was to ensure that all citizens, notably freed slaves, would be able to exercise fundamental rights, such as the right to vote. For all its influence, *Santa Clara* is notable for its brevity, particularly the court's opinion on whether the 14$^{th}$ Amendment's protections extended to corporations, as this passage from the court's record demonstrates:

> Before argument, Mr. Chief Justice [Morrison] Waite said: "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to

> deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does."

This application—some have called it "hijacking"—of the 14th Amendment to bolster the rights of corporations is one of the great peculiarities of American legal history. *Santa Clara* becomes even unusual in light of the even older decision, *Trustees of Dartmouth College v. Woodward*, decided in 1819.[xi] Regarding the powers of corporations, Chief Justice John Marshall wrote for the majority:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it" (Trustees).

*Citizens United* rests on this foundation of distinctive corporate personhood.[xii] When the American Constitution was written corporations were relatively rare. By 1780, Horwitz notes, American colonial legislatures had issued charters on seven business corporations; by the end of the century the total number of charters was only 342 (*Transformation: 1780-1860*, 112). Concerned at the increasing power of corporations, Thomas Jefferson, Justice Stevens noted in his *Citizens United* dissent, wrote to a friend in 1816 that he hoped "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 bid defiance to the laws of our country" (42).

## The Supreme Court, Congress, and campaign finance reform

Since the passage of the Tillman Act of 1907, Congress has approved 12 major legislative acts affecting campaign finance—indicative of a both long-standing public concern and a commitment to an egalitarian view of free speech. In 1971 Congress passed the Federal Election Campaign Act, which was radically amended three years later after the Watergate scandal. This revised 1974 legislation established limits on campaign spending and contributions by individuals, political committees, and party organizations, as well as strengthening disclosure requirements. The act also created the Federal Election Commission, and an optional system of public financing paid out of a voluntary federal income tax check-off program.

In the landmark 1976 decision *Buckley v. Valeo*, the court attempted to balance First Amendment liberty with the government's interest in a vigorous electoral system free of distortion by monopoly pressures, corruption, or the appearance of corruption. The court upheld limits on direct contributions to candidates, but found that spending limits for Congressional candidates were an unjustified limit on free expression. The spending of money, the court said, whether contributions or expenditures, is a constitutionally protected form of speech. Reasonable contribution limits were justified because of the government's interest in preventing the appearance of improper influence or *quid pro quo* corruption. Spending limits in general, however, infringed on the quality and quantity of speech, and therefore violated the First Amendment (Whitaker, 6). An exception to spending limits was carved out for "communications" [radio and TV ads] that specifically advocated the defeat of clearly identified candidates using so-called "magic words" such as "vote for," "elect," "defeat" and so forth. Disclosure and reporting requirements were upheld.

The upshot of this opening for corporations and unions was that by the 1996 election cycle nearly $150 million had been spent on so-called "issue ads" that were obvious, thinly disguised efforts to defeat specific candidates.

Two years after *Buckley*, in *First National Bank of Boston v. Bellotti*, the Court held that the fact that the corporation is the speaker does not limit its ability to engage in political speech (Whitaker 14). A group of corporations challenged a Massachusetts law that prevented corporations from spending money to influence an election, unless the issue at stake could materially affect a corporation's business. The Massachusetts law, the Supreme Court ruled, violated the corporations' First and 14$^{th}$ Amendment rights. In his dissent in *Bellotti* Justice Rehnquist wrote that the fundamental concern was not to equalize opposing candidates or positions, but rather was a matter of: "Preventing institutions which have been permitted to amass wealth as a result of special advantages extended by the state for certain economic purposes from using that wealth to acquire an unfair advantage in the political process" (*First National Bank of Boston*).

In 1990, in *Austin v. Michigan Chamber of Commerce*, the court found that Michigan's ban on direct campaign spending by corporations did not violate the First or 14$^{th}$ Amendments. State limitations on corporate political spending were upheld, based

on the government's interest in preventing the corruption or distortion of the political process itself by corporations, which enjoy a state-conferred favored status regarding the accumulation of capital. The intent was to prevent the inequitable conversion of economic capital to political capital (Whitaker 20). The state's interest was not to equalize spending, but rather to ensure that campaign spending reflected actual public support for the ideas promoted by the corporation (20).

After nearly nine years of efforts, in 2002 Congress approved legislation aimed at limiting the role of so-called "soft money" and fake "issue ads" in political campaigns. Usually referred to as McCain-Feingold, the legislation included a ban on "issue" ads within 30 days of a primary or 60 days of a general election. The bill also prohibited "soft money" donations made directly to political parties, as well as the solicitation of such contributions.

A year later the Rehnquist court, by a 5-4 majority, upheld key McCain-Feingold provisions in *McConnell v. Federal Election Commission*. The majority opinion upheld the limits on raising and spending previously unregulated political party soft money, and the prohibition on corporations and labor unions using treasury funds to pay for electioneering communications (34). In *McConnell* the court recognized that a strong temptation exists for legislators to make decisions based on the wishes and undue influence of large financial contributors, rather than what is best for all constituents. While not technically *quid pro quo* corruption, this effect of "soft money" is both difficult to detect and hard to criminalize. Therefore limits on soft money were defensible, despite whatever less significant limits they put on corporate speech.

One signal campaign finance rules might be in serious jeopardy, however, came in 2007 when the court, under the relatively new leadership of Chief Justice John Roberts, ruled in *FEC v. Wisconsin Right to Life* that only corporate-funded ads "susceptible of no other reasonable interpretation" other than an exhortation to vote for or against a specific candidate were barred by a part of McCain-Feingold known as § 203. Only election communications that met the narrow test as the "functional equivalent" of "express advocacy" could be covered by § 203 of McCain-Feingold (Hasen 10).

What was prefigured in *FEC v. Wisconsin Right to Life* came to pass last year with the court's *Citizens United v. FEC* decision. The main reversal was the court's

overturning of Section 203—the section of McCain-Feingold that forbid corporations and unions from spending their general treasury funds for "electioneering communications" in the period immediately before an election (*Citizens* 1).

Citizens United, a non-profit, issue-driven organization, produced a feature-length film, *Hillary: The Movie*. Citizens United wanted to use $1.2 million of its funds to pay a cable operator to make the video available for free download by cable subscribers. The FEC argued that *Hillary: The Movie* met the *Wisconsin Right to Life* "functional equivalency" test.[xiii]

In the majority opinion the court wrote that § 203 should be regarded as an outright ban on political speech. Separate PACs, the court said, were no remedy, because the burden of forming PACS was onerous, and amounted to an outright ban. Any ban on political speech must meet the "exacting scrutiny" test of serving a compelling interest and be the least-restrictive means of advancing that interest, which Justice Kennedy wrote, § 203 of McCain-Feingold failed to do (Dorf 1).[xiv] To invalidate § 203 the court had necessarily to overrule *Austin* and part of *McConnell.* This prompted Justice Stevens in his *Citizens United* dissent to write that the court had struck at "the vitals" of *stare decisis*, the legal principle that law ought to honor preceding decisions by developing in a logical and orderly fashion. As Stevens also observed in his dissent, the only relevant thing that had changed since *Austin* and *McConnell* was the composition of the court (Citizens 25).

The claim by the Roberts court that *Austin* and *McConnell* banned corporate speech was an exaggeration. As Justice Stevens noted in his dissent, "many additional avenues for corporations' political speech" were left open: particularly PACs, which have the additional benefit of protecting the interests of those shareholders who may not agree with the corporation's point of view or even want the company to speak politically.

Meanwhile, political campaigns at all levels of government continued to cost more money each election cycle. Total campaign spending by candidates, political parties and special-interest groups reached nearly $4 billion in the most recent 2010 election cycle, according to the non-partisan Center for Responsive Politics, up dramatically from the $2.85 billion spent in the 2006 midterm elections (Center).

*Citizens United*: an appraisal

The 180-page *Citizens United* opinion is both wide-ranging and complex. The essence, however, of the issue is what was at stake in *Austin*: Corporations, by virtue of their favored status, possess extraordinary resources and political power. The people's paramount interest is both electoral and a legislative process as free as possible from distortion and corruption. Justice Kennedy, writing for the majority, was dismissive of concerns over the appearance of corruption: "The appearance of influence or access … will not cause the electorate to lose faith in our democracy" (*Citizens* 44). This reasoning is peculiar, clearly out of touch in light of recent political life, reflecting the same "crabbed" view of corruption that Justice Stevens cited in his dissent (*Citizens 57*). A 2001 ABC News poll found that 80 percent of the public thought that politicians often do special favors for people and groups who give them campaign contributions, and only 11 percent thought this was *not* a problem: 74 percent thought such special favors tended to be unethical (Phillips 328). Numerous other polls over the years have found similar attitudes to be consistent. The appearance of influence or access *does* affect the electorate's faith in our democracy.

A few sentences later Justice Kennedy elaborates: "The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials" (*Citizens 57*). While perhaps comforting this utterly misses the point: The issue in contemporary politics is that political battles increasingly are waged between affluent vested interests, leaving entire segments of the American electorate without a voice. American politics, a neutral observer would conclude, consists of the struggle to maintain a semblance of political equality in the face of increasing asymmetries. Economic inequality, which is at historically acute levels, profoundly affects our political process, as political scientist Larry M. Bartels writes, "frustrating the egalitarian ideals of American democracy" (6). In a rigorous study of senate voting records from 1989 to 1994 Bartels found that senators were consistently responsive to the views of affluent constituents, but "entirely" unresponsive to those with low incomes, even after adjusting for differences in voter turnout, knowledge, and legislator contact between affluent and poor groups (275-9).

Conclusion

After turning its back on *Austin* and *McConnell*, albeit in a 5-4 decision, the court will be unlikely to deviate in the next few years from the ideological trajectory established in *Citizens United*—unless of course President Barack Obama were to have the opportunity to nominate a presumably more egalitarian justice. Now in its sixth term, the Roberts court has established a clearly pro-business record, ruling in favor of business interests 61 percent of the time, compared with the Rehnquist court's record of 46 percent, and 42 percent of all courts since 1953 (Liptak 1).

The court seems inclined to support strengthened disclosure and disclaimer requirements by corporations that make contributions to campaigns. This approach seems likely, given the makeup of the existing court, though Justice Clarence Thomas has clearly indicated he would not even support disclosure requirements. It may continue to move in a more libertarian direction and invalidate limits on direct contributions to political candidates altogether.[xv]

As legal scholars have observed, the *Citizens United* decision contains some incoherencies: What will the Court decide if Congress attempts to limit campaign spending by foreign entities interested in influencing U.S. elections (Hasen 29) How would limits on foreign spending for political speech square with *Citizens United*'s libertarian approach? A notorious 2009 case, *Caperton v. Massey*, raised the question of undue influence and the appearance of *quid pro quo* corruption in judicial elections. Will a different standard apply in judicial elections, in which the candidate is supposed to be impartial?

Whether corporations and other organizations, freed from the constraints of PACs and other limits, will exploit their freedoms by dramatically increasing their direct political contributions remains to be seen.[xvi] Lobbying offers a lower-profile, effective means of influencing public policy. Even so, it is safe to say more money will continue to flow into elections, especially into feature-length "electioneering communications," such as *Hillary: The Movie*, which prompted *Citizens United*.[xvii] The advent of various Internet-carried political content on sites such as YouTube, Slate, Politico and others, has fragmented the audience for political content even further. Rapidly changing

communications technology, difficult if not impossible to regulate, played a significant part in the majority's decision in favor of a more libertarian public square. How will politics be conducted in an era of Twitter and Facebook? Will these "viral" media be a counter-weight to the reach and resources of video networks, such as Fox?

The fundamental tenet upholding the court's libertarian rationale is the more speech the better: The people will be better able to judge for themselves which candidates and issues to support if there is more speech, not less. Yet this brings us full circle: The economic power of corporations is so great that there exists a real danger they can easily dominate the discussion, drowning out the voices of those with fewer resources, but whose point of view may be motivated to a much greater extent by a legitimate vision of public good. More than a century of campaign-finance jurisprudence reflected this concern, which was grounded in experience.

Yet we're faced with widely diverging positions on how, and how much the government may intervene in a political public square where money and speech are co-equal. In the end this tension between the First Amendment and campaign-finance rules amounts to a fundamental opposition: On one hand a libertarian antipathy toward any encroachments on First Amendment absolutism; on the other an egalitarian recognition that some rules have been shown to be necessary to achieve the fair, lively and diverse civic discourse libertarians say First Amendment liberties were meant to secure.

When money and political speech are synonymous, and the prevalent socio-economic climate shows such great and increasing disparities, legislative decision-making, if not the electoral process itself, will increasingly serve the interests of those at the top of the socio-economic ladder. Laissez-faire policies of market liberalism have not worked for the welfare of the entire polity.[xviii] Critical questions face our nation involving collective environmental resources, such as clean, air and water. Other urgent issues dependent on limited resources face us, including health-care, infrastructure, and education, to name just three. At a time when it's essential that the collective good be the sole criterion and every American's interests be fairly represented, *Citizens United* only solidifies more advantages for entrenched, powerful interests.

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[i] Industrialist, politician and manager of William McKinley's 1896 presidential campaign.
[ii] See *Virginia State Pharmacy Board v. Virginia Citizens Consumer Council*, decided the same year.
[iii] There are signs our meritocracy is broken. Earnings of mathematicians and computer scientists increased by 4.8 percent during 1989-1997, while the earnings of engineers actually decreased by 1.4 percent. In the same period, CEO pay, however, increased by 100 percent (Bartels 17). Between 2007 and 2009 more than half of workers who lost jobs they had had for at least three years, and then found full-time work, reported wages declines—with a third reporting the new job paid 20 percent less than the one they lost (Reddy).
[iv] Even before the financial pressures of modern campaigns lawmakers proved susceptible to greed. One era was known as the "Great Barbecue," the 1862-1877 period during which Congress passed a series of railroad bills (Kaiser 81). Later in the 19th century the trusts used their power unhesitatingly in legislative assemblies.
[v] Johnson Newlon Camden, who served as a West Virginia senator from 1881 to 1887, wrote to Standard Oil Co. partner Henry Morrison Flagler in 1882: "My dear Mr. Flagler, I have arranged to kill the two bills in Md. Legislature at comparatively small expense" (292). In his essay, A Chapter of Erie", prompted by the pillaging of the Erie Railroad in the late 1860s, Charles Francis Adams wrote of American statehouses: "The halls of legislation were transformed into a mart in which the price of votes was niggled over, and laws, made to order, were bought and sold" (Friedman 513).
[vi] Union representation among American workers, 11.9 percent, is at its lowest point in 70 years, according to the federal government's Bureau of Labor Statistics. In comparison, during the 1950s the percentage of American workers who belonged to unions was 35 percent ("Prime Number"). Though labor organizations still possess a great deal of clout, their influence pales beside the financial resources of corporations. As a result discussions of campaign-finance reform efforts have become more focused on corporate contributions and the role of issue-oriented organizations.
[vii] At the World Economic Forum in Davos, Switzerland last week, Dennis J. Snower, president of the Kiel Institute for the World Economy in Germany, noted, as have others, that, "Profits are privatized, and there is an assumption that losses will be socialized. No amount of buffers will solve that" (Ewing B5).
[viii] Also just last week the new Congress's House Ethics Committee cleared three representatives of conflict-of-interest accusations. The three congressmen had invited financial industry lobbyists to a fund-raising event days before—and in one case the night of—a December 2009 House vote on a draft of the financial "reform" bill that became law last year (Lipton A19). Lawyers for the House members argued that fund-raising consultants sent out the invitations, and there was no evidence the House members had discussed the substance of the legislation at the events (A19).
[ix] In many cases relevant regulations existed, but were disregarded. Alan Greenspan, then chairman of the Federal Reserve Board, rejected a public call from a Federal Reserve Board governor for an investigation into mortgage risk early in the decade (Madrick 55).
[x] In comparison, the savings and loan scandal of the 1980s and early 1990s directly cost American taxpayers at least $125 billion (U.S. General Accounting Office). The investigations that followed resulted in more than a thousand felony convictions, including politically influential figures such as Charles F. Keating. (Weil). Other political figures were implicated, including five U. S. senators known as the Keating Five. The core of the scandal was that regulators backed off their inquiries into Lincoln Savings and Loan's practices after $1.3 million in campaign contributions to the five senators.
[xi] A decision in which the court strengthened its interpretation of the Constitution's contract clause, limiting government's power to interfere with private charters.

[xii] Newly nominated and confirmed justice Sonia Sotomayor raised this issue in her first Supreme Court appearance, demonstrating how significant an issue corporate personhood is—125 years after the Santa Clara decision (Bravin A19).
[xiii] Though Citizens United had enough money to pay for the video-on-demand service from political-action committee funds, it chose not to.
[xiv] "Under this standard of review, a court will evaluate whether the government's interests in regulating are compelling, examine whether the regulation burdens and outweighs First Amendment liberties, and inquire as to whether the regulation is narrowly tailored to serve the government's interests. If a regulation meets all three criteria, a court will uphold it" (Whitaker i).
[xv] See Sullivan.
[xvi] State law offers little guidance because it is such a patchwork: Six states place no limits on corporate contributions to political campaigns. Another seven have minimal limits. At least seven states index contributions either by office sought or consumer price index.
[xvii] The campaign waged against climate-change science by vested interests, such as Koch Industries, provides a compelling case study of how legitimate, mainstream scientific research and public opinion can be manipulated by those with vast resources (Greenpeace, Mayer).
[18] See Polanyi, Karl. *The Great Transformation: The Political and Economic Origins of Our Time*. (1944) Boston: Beacon Press, 1957.

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