The Hightower LOWDOWN

Edited by Jim Hightower and Phillip Frazer ◆ Vol.11 No.9 ◆ September 2009

"There are two things that are important in politics. The first is money, and I can't remember what the second one is."

— **MARK HANNA,** Republican party chairman in 1896. He raised $3 million for presidential candidate William McKinley, who outspent William Jennings Bryan nearly 12 to 1 and won handily.

Roberts jumps to serve his favorite constituency, on the quiet

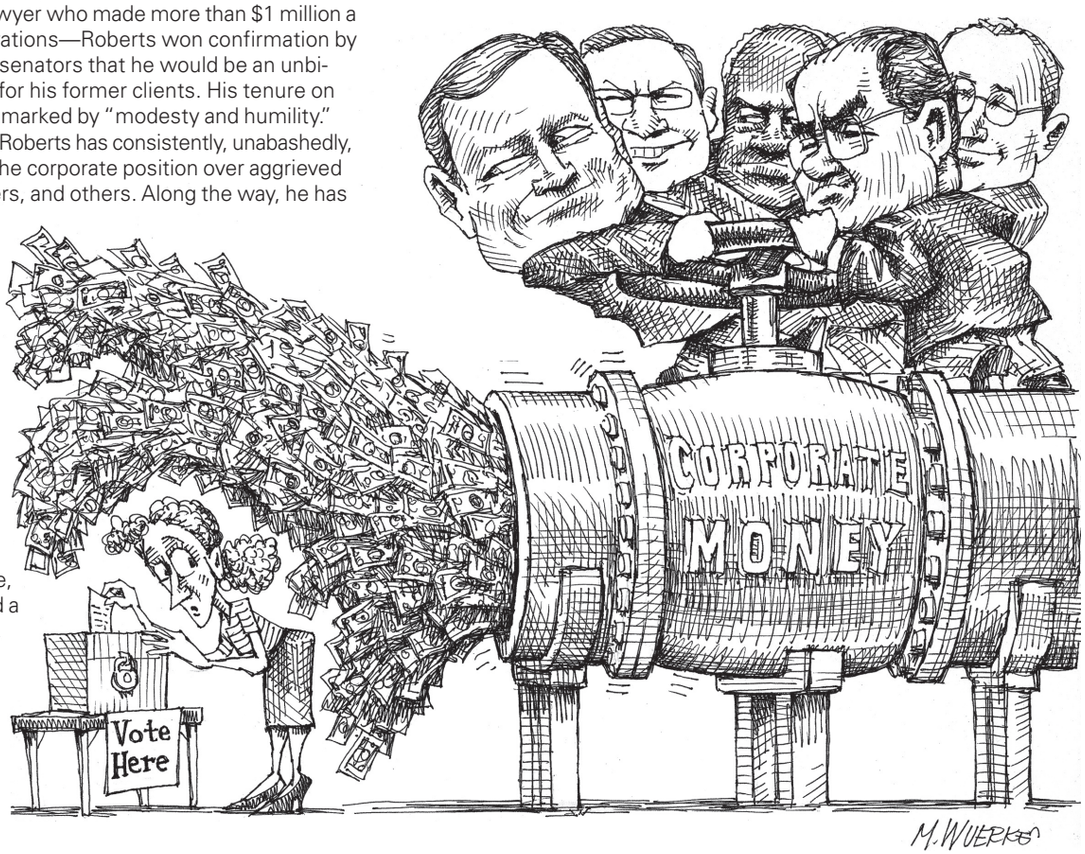
Supreme Court considers vast increase in the political power of corporations

AT HIS 2005 HEARING TO BE CONFIRMED as chief justice of the Supreme Court, John Roberts had to convince some skeptical senators that he would not be merely a judicial shill for the corporate powers he had long served in both private practice and government work. To get over this hump, the dapper and affable Roberts charmed senators (as well as the media) with a comforting, homespun baseball analogy: "Judges are like umpires," he softly assured the committee. "Umpires don't make the rules. They apply them. The role of an umpire and judge is critical. They make sure everyone plays by the rules. But it is a limited role. Nobody ever went to a ballgame to see the umpire."

Boffo performance! This son of a corporate executive, this disciple of (and former clerk for) right-wing Justice William Rehnquist, this faithful Republican who served on George W's legal team that wrested Florida and the presidency away from Al Gore in 2000, this Washington lawyer who made more than $1 million a year representing corporations—Roberts won confirmation by convincing 22 uneasy Democratic senators that he would be an unbiased umpire, not a judicial activist for his former clients. His tenure on the court, he said plainly, would be marked by "modesty and humility."

He lied. In his four years as chief, Roberts has consistently, unabashedly, and rather ruthlessly championed the corporate position over aggrieved workers, the environment, taxpayers, and others. Along the way, he has not been hesitant to make law from the bench. For example, he sided with Goodyear Tire in the infamous 2007 ruling against Lilly Ledbetter. From 1979 to 1998, she was the only woman serving as a plant supervisor at a Goodyear factory in Alabama. Only at the end of her career did Ms. Ledbetter learn that she had routinely been paid as much as 40% less than her male counterparts. So, in 1998, she filed an anti-discrimination lawsuit, which finally made its way to the Supremes. There, in an absurd rewriting of the law and a blatant rejection of legal precedent, Roberts joined four other justices to rule that she had no valid claim because she had not filed suit within 180 days of first suffering the discrimination—even though she didn't know about the pay disparity for 20 years!

In a time when the public has been making clear its disdain for corporate avarice, arrogance, and abuse—and its desire to rein in the ferocious power of these behemoths—Roberts has crafted a slim majority of the nine justices (usually this is himself, Anthony Kennedy, Clarence Thomas,



STARBUCKS DISOWNS ITSELF

At last, a powerhouse competitor has challenged the market dominance of the corporate coffee colossus, Starbucks. The name of the upstart competitor? Starbucks.

Well, actually, you won't find the corporate name on the challenger, and that's the point. With its own sales declining as more and more caffeine consumers reject the cookie-cutter corporate climate that the coffee chain epitomizes, Starbucks is launching a new line of stores that jettisons its own brand—no Starbucks sign outside, no logos inside, and none of that stuff that makes each Starbucks store just like the 16,000 others in the chain.

The new shops strive to be the anti-Starbucks, with funky stylings and localized names that disguise the corporate presence behind them. The idea, says Starbucks' senior vice president of global design, is to give the stores "a community personality."

This is such a clumsy and transparent fraud that it's doomed to be an embarrassing failure. Start with the fact that genuine coffee shops already have "a community personality"—and none of them has a senior vice president of global design.

Corporate chains can't do "community," "funky," "cool," or "independent"—because they're not. Starbucks even deployed a gaggle of market researchers into local Seattle coffee shops last year, to gather intelligence on what constitutes "community personality." The spies didn't exactly fit in—they arrived as a group, poked around and jotted notes in folders labeled, "Observation." Then they'd leave without buying a single cup of coffee!

Starbucks can hide its name, but its corporate nature will always out.

Antonin Scalia, and Samuel Alito) to go 180 degrees in the other direction. These five men have quietly turned our judicial branch of government into an activist, antidemocratic force for expanding the reach of corporate elites over the rest of us. [Interesting non sequitur about Scalia and Alito: Irreverent songwriter Randy Newman asked an intriguing question: How is it that the only two tight-assed Italians in America both ended up on the Supreme Court?]

Sneak attack

Now comes a coup attempt by the Roberts Court—an unprecedented effort to bestow upon corporations a First Amendment free-speech "right" that would let them open their coffers and swamp all of our elections (national, state, and local) with unlimited infusions of corporate funds into ads that support or oppose candidates. While corporate checks still could not go directly to candidates, the Court would be unleashing corporations to dip into their treasuries and spend all they want on their own "independent" campaigns to elect or defeat candidates.

As the *Lowdown* frequently reports in detail, contributions from the executives of corporations already give these special interests a much larger and louder political voice than We the People have. But this radical move by the Roberts Court would open the floodgates, allowing corporate entities themselves (not just their executives) to drown our democracy with their vast, unmatched reservoirs of money.

Unsurprisingly, the Court has not trumpeted its astonishing attempt to enthrone "corporate speech" over the vox populi. Rather, on June 29, the Court quietly issued an obscure, little-noticed order in the pending case of Citizens United v. Federal Election Commission. Instead of ruling on the merits of this case, a majority of justices took the rare step of using it to re-open two previous campaign-finance cases that had already been decided. Specifically, Roberts & Company directed the parties in the Citizens United case to make new arguments, addressing whether existing limits on political spending by corporations should be—Shazzam!—rendered unconstitutional.

The two cases targeted (Austin v. Michigan Chamber of Commerce, decided in 1990, and McConnell v. FEC, decided in 2003) essentially declare that Congress and the states can ban executives from using corporate treasuries to support or oppose political candidates. If these precedents are overturned, Wal-Mart could tap the billions it takes from us consumers to run ads opposing members of Congress it dislikes, or insurance giants could use the premiums they collect from us, funneling these billions into campaigns to defeat lawmakers who support a single-payer health-care system. Such a ruling would be tantamount to imposing corporate rule on America.

The Roberts clique would, in one abrupt blow, reverse more than a century of campaign-finance law and more than 200 years of broad public agreement that corporate interests should be subjugated to the public interest. That's hardly "modesty and humility."

The media refers to the current Court as "conservative," but there's nothing conservative about this. The five justices are trying to replace the will of Congress and the will of the People with their own, even as they trample on the Court's own clear precedents. These guys are poster boys of runaway judicial activism.

Not only are they trying to avoid public detection, but they're also in an unseemly rush to get their dirty deed done. The Court's June order gave all concerned parties only one month to file legal arguments on such a momentous shift in the balance of political power, and it hurried the judicial process by scheduling oral arguments for September 9—a month before the Court's new term even begins.

This haste may be prompted by a sense that a five-member majority is tentatively leaning toward turning corporate political spending loose, so Roberts wants to get it done before public (and congressional) outrage can back off any of the five.

"We the Corporations?"

The Constitution itself makes no mention of corporations and creates no corporate rights. Our nation's founding document was deliberately written to guarantee sovereignty and the right of self-government to "The People"—and the founders most certainly did not intend for any corporation to be embraced within that term. Both national and state lawmakers abhorred and feared the rise of raw corporate power, and they went out of their way not only to declare these business structures a perpetual threat to democracy, but also to ensure that the corporate reach was strictly limited.

Thomas Jefferson bluntly declared in 1816 the need to "crush in its birth the aristocracy of our moneyed corporations, which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country." His was a common view, for leaders at the time knew that corporations are inherently antidemocratic artifices of the wealthy elite, allowing controlling investors to do two dangerous things: **(1)** amass far more money than other interests can muster and use it to elevate their private interest above the common good; and **(2)** absolve investors of any personal responsibility for the damage done by their corporations.

These hierarchical, autocratic, profit-seeking entities are created by state-issued charters. Today, the charters are handed out with few questions asked, but in our nation's first 70 years or so, they were hard to get. To be chartered a corporation:

- **Had to have a public purpose.** If it failed to adhere to this purpose, the state yanked its charter and the corporation was dissolved.
- **Was limited in what business it could pursue,** was not allowed to buy other corporations, and could amass only a specified level of capital.
- **Faced term limits,** with charters usually expiring after 20 years, requiring investors to apply to the legislature for charter renewal.

DoSomething!

For more information, check out the following websites:

Several progressive groups have done extensive research on various aspects of corporate "rights," and some have filed friend-of-the-court briefs in the case that Justice Roberts is using to unleash corporate campaign spending. Also, some groups are working to overturn the ridiculous claim of corporate personhood. For more information contact:

- **American Independent Business Alliance** *www.amiba.net*
- **Demos** *www.demos.org*
- **Campaign Legal Center** *www.camlc.org*
- **Public Citizen** *www.citizen.org*
- **POCLAD** *www.poclad.org*
- **Reclaim Democracy** *www.reclaimdemocracy.org*

For action, *Lowdowners* can help stir up awareness of this ominous shift in America's political system. The media are mostly asleep, most Congress members are unaware of it, and even activist organizations have not been alerted. To help rally the media, Congress, and the public, Public Citizen has put up a website of suggested actions. Check it out…And act!

www.dontgetrolled.org

- **Had to treat farmers,** small businesses, and other suppliers fairly.
- **Was strictly prohibited** from lobbying or playing any role in political campaigns.

One fundamental point was established from the outset: *a corporation is not a person*. The people in a corporation (shareholders, management, workers) have the inalienable rights of citizens—they vote, participate in campaigns (give money, volunteer, run for office), serve in government, speak, and assemble. But the corporation itself—an inanimate object—can't. People breathe, think, ponder their souls, and can be put in jail. A corporation can't. It is a paper construct, an artificial being—a thingamajig.

Yes, governments can (and do) bestow privileges on the thingamajig, but it is absurd to assert—as Roberts appears to be doing—that the thingamajig has the same rights as humans, and therefore cannot be prevented by elected governments from dumping its treasury into our elections.

In fact, the Supreme Court itself has ruled down through history that corporations are indeed subject to whatever restrictions the People choose to put on them. Here are a few of the Court's pronouncements that the Roberts Five would summarily reject:

"[A corporation is a] mere legal entity…not a citizen."
— BANK OF THE US V. DEVEAUX, 1809

"[A corporation is a] mere creature of law [that] possesses only those properties which the charter confers upon it."
— CHIEF JUSTICE JOHN MARSHALL
DARTMOUTH COLLEGE V. WOODWARD, 1819

"[A corporation is] an artificial being…existing only in contemplation of law [and created only for such] objects as the government wishes to promote."
— DARTMOUTH COLLEGE

"The only rights [a corporation] can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state…"
— BANK OF AUGUSTA V. EARLE, 1839

"The liberty referred to in that [Fourteenth] Amendment is the liberty of natural, not artificial persons."
— NORTHWESTERN NATIONAL LIVE INS. CO. V. RIGGS, 1906

"Neither the history nor the l anguage of the Fourteenth Amendment justifies the belief that corporations are included within its protections."
— CONN. LIFE INS. CO. V. JOHNSON, 1938

"It has been settled that corporations are not entitled to all of the constitutional protections which private individuals have…"
— OKLAHOMA PRESS PUBLISHING CO. V. WALLING, 1946

"It cannot be disputed that the mere creation of a corporation does not invest it with all the liberties enjoyed by natural persons…"

"It is thus an accepted part of the business landscape in this country for states to create corporations, to prescribe their powers, and to define the rights that are acquired by purchasing their shares."
— FIRST NATIONAL BANK OF BOSTON V. BELLOTTI, 1978

"The unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures."
— AUSTIN V. MICHIGAN CHAMBER OF COMMERCE, 1990

"[Restricting corporate] electioneering communications [is based on] legislative judgment that the special characteristics of the corporate structure require particularly careful regulation."
— MCCONNELL V. FEC, 2003

Whose money is it?

Corporations are different from you and me (beyond the obvious fact that they don't happen to be alive). When it comes to having a right to spend money in election campaigns, two intrinsic, structural realities disqualify the corporate entity from its claim to be just another group of concerned citizens.

First, the money that executives would disburse from the corporate treasury does not belong to them. When citizens (i.e., real people, including the many individuals involved in the corporate entity) put up money to support or oppose candidates, they're drawing from their own pockets. But executives who would direct political spending from the "corporate person" would be using funds that are not theirs.

Corporations aggregate massive sums of money from shareholders (including pension funds), as well as from lenders, consumers, and even employees who make financial concessions to management. Collectively, these funds come from millions of people who have widely differing political opinions and goals. None of them put their money into the corporate coffers for political use, and none meant for this money to be treated as an endorsement of the corporation's political ideas. For executives to divert any of this wealth into campaigns without the knowledge and okay of those who put up the money is unethical, amounting to fraud and theft.

For example, corporate executives are inevitably going to finance political messages in support of candidates who will oppose worker pro-

GUN ADVOCATES IN CONGRESS

A tombstone in an old, Wild West cemetery in Arizona is chiseled with the last thoughts of a young gunslinger: "I was expecting this, but not so soon."

Many politicians are hot to return to the gun slinging days of yesteryear. The answer to violent crime, they say, is simple: allow all law-abiding citizens to pack heat wherever they go.

In May, Congress passed a law okaying concealed weapons in our national parks. Now, they say, families will feel so much safer knowing that if some nut with an AK47 goes on a rampage at Yellowstone, vacationers from Peoria and Poughkeepsie will spring out of their minivans and gun him down.

Worried about your kid being massacred in math class? Hey, pack a piece in your kid's backpack. Going across state lines on a golfing adventure? Carry your Glock as well as your wedge. You never know who's gonna be in a bar, so always keep your own shots handy. And wouldn't church service be more serene if parishioners felt that reassuring heft of a godly weapon in their pockets? Hordes of politicos wave the Second Amendment while bellowing that Americans should be free to carry concealed weapons everywhere.

Everywhere? Well, they do make one exception: Their own workplace.

The thought of an armed citizenry being inside our national and state capitals cause these blowhards to blanch—so they have metal detectors and armed guards to keep gun-toting constituents from entering America's legislative halls.

If they are so adamant that guns belong in our schools and parks, why are they so afraid of the American people bringing them inside Congress?

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MAX BAUCUS'S CORPORATE SPONSORS

Max Baucus chairs the Senate Finance Committee that is presently grinding out its version of a health-care reform bill. This has made the Montana Democrat a very popular guy—not with consumer advocates, but with lobbyists for the insurance, hospital, drug, and other corporate powers fighting furiously against any real reform.

These special interests are throwing money at Max, and to make it easy for them, the chairman has events at which he accepts love offerings. In February, as he began the bill-writing process, he invited corporate check-writers to a $10,000-per-table celebration of himself at a ritzy Washington hotel.

Then, in May, Baucus had an intimate dinner in a San Francisco mansion with about 20 keenly attentive corporate executives. They had ponied up at least $10,000 each to share chicken cordon bleu with the chairman and coo softly about the sexier side of co-pays and cost containment. Next came Max's annual "fly-fishing and golfing weekend" in Big Sky, Montana, attracting guests who donated a minimum of $2,500. You probably weren't invited, but every health industry lobbyist was.

Baucus knows about conflict of interest—he drew a sharp ethical line on June 1, declaring that he would refuse donations from health-care PACs until after the reform legislation is passed. Does this ban include contributions from health-industry lobbyists and executives? Don't be silly—no need for ethical extremism.

Max is cashing in because—well, because he can. As an amiably-corrupt Texas state senator once said of the sacks of money he received: "I seen my chances, and I took 'em."

tections, environmental regulation, shareholder rights, consumer-right-to-know laws, closing corporate-tax loopholes, and so forth—political stances that work directly against the interests of most of those whose money is being spent.

Second, the rules of corporate governance and the fiduciary responsibility of executives prohibit these artificial persons from allowing democracy in their own organizations. Citizen groups (women, consumers, seniors, small business, labor, environmentalists, poor people, students, farmers, etc.) can hold multiple electoral objectives, debate which values to prioritize, alter their basic policy goals, and even choose anticorporate candidates.

The corporate structure, however, is fundamentally different, for its managers are legally bound (by state law, federal regulators, court rulings, etc.) to pursue one goal and one goal only: increasing corporate earnings for shareholders. The individuals in a corporation have many (and often conflicting) values and goals that they freely express with their own political advocacy, but the corporation itself—BY LAW—would have no choice but to use its "speech" and political spending strictly to advance its one single-minded, selfish interest—i.e., more profit.

In other words, corporate speech cannot be "free" and cannot reflect the diverse and disparate views and values of the actual persons within it. There can be no open, democratic discussion inside a corporation about how its money should be spent in the political arena. It can only be spent to achieve greater profits—this is set by law and cannot be adjusted for the needs of others in society, for the needs of the nation, or for the greater good.

Corporate personhood

THE FANCIFUL NOTION THAT A CORPORATION IS A "PERSON" and is thus imbued with fundamental constitutional rights stems from—get this—a mistake.

It happened in 1886, when the Supreme Court considered an obscure tax case, Santa Clara County v. Southern Pacific Railroad. At that time, the robber barons were flexing their political muscles, and their corporate lawyers were trying to convince Congress, legislatures, the courts—anybody—that the 14th Amendment (ratified in 1868 to give equal protection of the law to former slaves) also applied to corporations. The claim was that this amendment miraculously transformed the corporate structure into a person.

It was, of course, hokum, and the lawyers were getting nowhere with their claim. Still, in the Santa Clara case, railroad attorneys tried to get the high court to rule for corporate personhood. The justices, however, deliberately did not do so—nor did they even discuss the matter. As Chief Justice Morrison Waite later put it, "We avoided meeting the Constitutional questions."

However, J.C. Bancroft Davis, a court reporter for a private publisher of legal documents, made The Big Mistake when he wrote a summary of the case. His opening sentence wrongly declared, "The defendant Corporations are persons within the intent of the clause in Section 1 of the Fourteenth Amendment..."

That's it. Today's grandiose claims of personhood for corporations are not grounded in the actual precedent of Santa Clara or in any declaration by Congress—but only in a mistake made by a clerk writing a case summary.

Flimsy as it is, Davis' erroneous statement was seized upon by corporate attorneys, and before long even the Court was asserting it as the law of the land. And now, Roberts et al. would extend the mistake to corporate spending on elections.

Teddy's challenge

There is nothing natural or democratic about corporations, and it is ludicrous for anyone to suggest that the present (and rather porous) limits on their political spending cause them any harm. No other interest group in America comes close to the dominant force that these outfits already exert over our elections and government—a fact we're now seeing in the Wall Street bailout and the gutting of health-care reform by the insurance giants.

For Roberts and his cohorts even to be considering the enhancement of Corporate America's electoral purchasing power is a breathtaking act of judicial overreach and a craven betrayal of our people's democratic ideals. If the justices need guidance to find the right path for balancing corporate money and democracy, they might consult with their fellow Republican, Theodore Roosevelt. In 1905, he called for a ban on "all contributions by corporations to any political committee or for any political purpose."

If Teddy hears what the Supremes are trying to do, he won't just roll over in his grave, he'll be furiously trying to claw his way out and go after them!

Meanwhile, let's raise our own ruckus.

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SUPREME COURT CONSIDERS VAST INCREASE IN THE POLITICAL POWER OF CORPORATIONS