

THE FICKLENESS OF DEMOCRACY

The Empty Barricades of *Citizens United*

In 2010, the U.S. Supreme Court threw open the floodgates for elections spending. In its infamous *Citizens United* decision, the Court struck down a federal campaign finance law which placed limits on corporate spending in elections, finding that those limits violated the free speech “rights” of corporations.

The ruling in *Citizens United*, of course, wasn’t entirely new – **corporate constitutional “rights,” after all, have been recognized by the courts since 1819.** In the case known as *Dartmouth College*, the Court held that corporations had a constitutional “right” to be free from state efforts to change their corporate charters.

Since that seminal decision, a long line of Supreme Court cases have held that corporations are entitled to free speech protections, the protection of their religious beliefs, and a slew of other rights that once belonged only to natural persons.

Unfortunately, **while the *Citizens United* decision definitely made our current political system worse, the truth is that things were pretty bad already.** While resetting the clock to the day before the ruling would make things slightly better, it would still return us to a time when the corporate fox was already firmly in control of the people’s henhouse.

And therein lies the rub. While people on both sides of the political spectrum dislike *Citizens United* and would like to see it overturned, they’re not taking to the streets over it. That’s because **overturning *Citizens United* – without challenging the larger system of law it represents – wouldn’t make much of a difference.**

Permanent dissent as democracy

While most of us would be hard-pressed to actually describe the system that we have as a democracy, we also seem to have abandoned any hope that we can transform it into something that resembles one. Instead, we resign ourselves to energy policy being

made by energy corporations, farm policy being made by agribusiness corporations, and economic policy being made by finance corporations.

It’s not that we don’t understand how the system works, it’s just that we don’t believe that any other system is possible. **We resign ourselves to a system of government that mostly works against our interests, and put our faith almost wholly in the power of our collective dissent to curb the worst effects of it.**

That ability to course correct is, oftentimes, more effective in our heads than it has been on the ground. In truth, actions taken by our governments, in collusion with large corporations, have taken decades of collective dissent to reverse, if we’re able to reverse them at all. And while social issues, such as same-sex marriage and segregation, have been more susceptible to the model of collective dissent (through activism over generations), areas of major policy – like energy, farming, and waste management – have largely been untouched by it.

While we continue to pin our hopes on a model of dissent which seeks to influence elected officials to act in our interests,

The collection of our phone records, the monitoring of our conversations, and the collection of our purchasing and internet search decisions, are all praised as positives because they make us “safer” and our lives more convenient.

Nuclear energy is portrayed as a “good” because nuclear plants don’t worsen climate change. Genetically modified foods are sold as a “good” because they allow us to “feed the world.” Dumping frack waste into the ground is the right decision because other alternatives for disposal are “less safe.”

Faced with dilution of our dissent, we are then forced to expend massive amounts of time and resources simply to challenge those characterizations. That work then consumes already scarce resources that would otherwise be used to leverage our dissent into actual influence.

Worse yet, even when we fight through the layers set up to stymie us, and eventually influence elected officials to adopt something real – such as a ban on GMOs or fracking or factory farms – corporations are able to leverage our courts and legislatures to override those laws.

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corporate strategy has evolved over the years. Understanding the importance of diminishing our influence, corporations have created endless campaigns to dilute public opposition by casting certain corporate decisions as beneficial, and thus, not requiring widescale dissent.

The overwhelming expansion of rights for corporations, for example, which now allows corporations to challenge almost any law which affects corporate property or permits, is praised by judges as an “expansion” of constitutional rights, which protects all of us.

This endless game of “whack-a-mole” takes its toll on activists and communities – continuously limiting our aspirations as the window of what’s possible becomes smaller and smaller, and the memory of ourselves as the true decision makers becomes dimmer and dimmer.

Breaking free

As the old saying goes, putting lipstick on a pig doesn’t change the fact that it’s a pig.

At some point – no matter how many column inches of newsprint are consumed by corporations, no matter how many

commercials air on television, no matter how much money is given to corporate think tanks and policy centers – the **almost complete corporatization of our public governments** becomes painfully obvious even to the sleepest of observers.

It happens when the State of Colorado sues its own municipalities to stop the people of those communities from adopting laws that ban fracking. It happens when the Pennsylvania legislature strips communities of the ability to exclude oil and gas wells from residential areas. It happens when the New York Attorney General sues the state’s own towns for interfering with corporate hog farms.

It happens when the U.S. president champions a trade agreement that will not only enable the world’s major corporations to grow ever larger, but which also recognizes the international authority of those corporations to override laws adopted by communities, states, and even national governments. It happens every time a court rules that a corporate board has more rights to use a community than community residents have to protect it.

The decision about which path to take ultimately comes down to **whether people understand that while reforming the system may slow down the rate at which it corporatizes, it won’t stop it**. And, unless it is stopped, any dream of economic or environmental sustainability will remain just a fleeting vision, impossible to implement.

Struggles between reformists and revolutionaries

Many are ready to swing the pendulum as far as it will go. **They’re the ones who understand that we stand on the brink of ecological collapse, and that the role of the current governmental system is solely to press harder on the accelerator as the car gets closer to the cliff.**

Many others, however, are content for the smallest of pendulum swings; indeed, the corporate powerbrokers count on that – for certain groups to cash out even before the chips hit the table. And after cashing out, those “progressive” groups become the corporations’ biggest advocates.

Even if they believe a new system is needed, leading liberal and progressive

Citizens United delivered that to corporations, at the expense of those who had access before, but whose access today is diluted by the impact of the Court’s decision.

In other words, post-*Citizens United*, progressive donations buy less.

Thus, the only people directly affected by *Citizens United* are those electoral donors who previously enjoyed a larger impact for their electoral spending. And it is those electoral donors who have imprinted their own brand of liberal and progressive candidates – officeholders who reflect their major donors by refusing to contest the basic mechanics of how the corporate state operates – and who are only willing to go so far to seek “more regulation” of corporate activities.

It is there that the revolutionaries part company with liberals and progressives. Revolutionaries not only believe a new system is possible, they understand that without one, the very survival of this planet teeters in the balance. They’ll risk their careers and devote their lives to building a new system, but **they won’t spend time trying to reset the clock on decisions like *Citizens United*.**

Movements aren’t built around battles between people with wealth and people with more wealth. They’re built between those who have no wealth and those that do. **The reason why most people don’t care enough about *Citizens United* is because it doesn’t affect them directly – precisely because they lacked any access to the system in the first place.** They’re not going to man the barricades or put their lives on the line just to return to the day before the decision was issued – because that means resetting the clock to a time when they had no access to the system anyway.

Calls are being made by those most directly impacted by the decision – those with some degree of influence in the system – to those without, urging them to “save democracy” by putting their energy behind a constitutional amendment that would return us to the day before the issuance of the *Citizens United* decision. While the liberal powers-that-be express disbelief that people won’t man the barricades over the ruling, they shouldn’t act so surprised. **To expect others to fight their fights, when those fights have become meaningless within the framework of this corporate state, is to finally understand how little of the existing system is worth saving.**

Corporate “rights” define what laws can be passed by communities.

It happens when our system of government is openly, unapologetically, and directly used by a corporate few for their own gains. It happens when the emperor sheds what few clothes he has left, and he just doesn’t care if he’s standing around naked.

That’s when the pendulum begins to swing.

How far it swings – whether simply to accommodate the meek, watered-down demands of reform, or whether we swing it so far as to remake its clock – is completely dependent on who we think that we are. Attempting to broker a better deal with a corporate system while accepting its general contours offers one path; **seizing our inherent right to community self-government free from corporate “rights” and governmental override, to build a world that doesn’t automatically destroy nature or our communities**, is quite another.

organizations don’t believe that a new one is possible. Their interest lies in protecting their access to influence the existing one. Give them status as a “stakeholder,” and they’ll fight to defend the system in which they have a stake, no matter how small or irrelevant that stake actually is.

It is those wealthy liberals and progressives who seek to influence the existing system — without changing the basic power structure behind it — who are now seeking to enlist broad swaths of the public to override the *Citizens United* decision.

A level playing field, which limits the amount of donor money in elections, favors those with less money to give, because it equalizes access between those donors. Corporate wealth tends to be on the other side, with very large donors desiring unfettered access to the electoral system.

Community rights and Citizens United

Corporate “rights” – the lodestar of law on which *Citizens United* was built – affirming that corporations possess many of the same rights as you and me, affects us most intimately in the communities where we live.

Currently, **corporate “rights” define what laws can be passed by communities.**

If a local law interferes with a state or federal permit held by a corporation, or otherwise tries to limit how a corporation uses its property within our communities, corporations have the option of using their corporate “rights” to drag our communities into court.

In all states, **local bans on gas fracking, water bottling operations, factory farms, and pipeline projects run afoul of corporate “rights” because they interfere with the vested property rights created by state and federal permits.** Not only can community laws be overturned by lawsuits brought by corporations – claiming that their corporate “right” to frack or factory farm has been violated by a local ban – courts also have the power to force communities to pay damages to corporations in the form of profits lost as a result of those laws.

The corporate “right” to frack has thus been given legal supremacy over a community’s right to sustainable and renewable energy systems. Thus, the corporate “right” to frack overrides the community right to not be fracked.

Likewise, the corporate “right” to take water has been legally elevated over a community’s right to sustainable water use. And the corporate “right” to build factory farms has been legally elevated over a community’s right to sustainable agriculture.

This is hardly unique to environmental issues. **In *Citizens United*, the corporate “right” to free speech was legally elevated over the people’s right to regulate electoral spending.** In the arena of labor law, **corporate “rights” in the workplace have been legally elevated over the constitutional rights of their employees.**

But as corporate spokespeople will tell you, it’s nothing personal. *It’s just business.*

Connecting *Citizens United* to the underlying issue of corporate “rights” – and the decision’s subversion of democratic authority – has **the potential to unleash a people’s movement aimed at overthrowing the basic, corporate structure of law under which we live.**

As it turns out, while people are unwilling to man the barricades to demand a return to the day before *Citizens United*, they *are* willing to lay siege to a structure of government that has become unrecognizable to the American Revolutionaries who built it.

Just do it

People in close to two hundred communities across ten states aren’t waiting for the liberal, progressive establishment to come to their senses and lead them into battle. They’re mounting up and charging in themselves.

In community after community, people faced with a system of law that elevates the legal authority of a corporate few over community majorities are using their municipal governments as battering rams against those corporations.

are cheering the passage of the most controversial provisions of those laws – provisions which subordinate corporate “rights” to the rights of the community.

These communities have given up on the ability of traditional, regulatory-based activism to help them, and have given up on state and federal regulatory agencies. They’ve also given up on the tired strategies of this country’s main environmental and labor organizations.

They’ve set their sights instead on returning to a system that elevates their right to local, community self-government above corporate “rights,” while dedicating themselves to recognizing a right to economic and environmental sustainability.

In so doing, **they are daring the corporate state to come after them in ways which illustrate to growing numbers of people how our current corporate system of law must be dismantled.** They’re intent not just on dismantling the current system, but on cauterizing it so that it cannot grow back.

It is, after all, what the history of this country is supposed to be about – that **when governments stop protecting the rights of people, the people have a right and a duty to alter or abolish our form of government so that it does.**

In *Citizens United*, the corporate “right” to free speech was legally elevated over the people’s right to regulate electoral spending.

They’re using their local governing authority to adopt *Community Bills of Rights* which recognize and protect the peoples’ rights to economic and environmental sustainability. Those local laws then ban corporate activities that violate those rights, while openly and directly stripping the authority of both corporations and state governments to override those bills of rights.

From Colorado to New Hampshire, communities are using those local bills of rights to ban fracking, water withdrawals, gas pipelines, and factory farms. And **they**

This country was forged in revolution, with ordinary people doing extraordinary things to drive that understanding into our original governing system. It is time, once again, for ordinary people to do extraordinary things to throw off a system of government which has gone astray, and replace it with a new system which requires government to be the servant of the people, not the other way around.

That will take more than a dislike of *Citizens United*. Empty barricades won’t make a revolution; only a community rights movement will.

The Community Environmental Legal Defense Fund (CELDF) is bringing public interest law, grassroots organizing, and community education together in a unique legal and organizing strategy, to build a movement for **Community Rights and the Rights of Nature.**

To learn more, visit our website – www.celdf.org – or contact us at info@celdf.org or (717) 498-0054.

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