Preface

This Brief is intended to assist communities organizing to challenge the United States government's gift of constitutional powers to property organized as corporations. Accordingly, this Brief is NOT about corporate responsibility, corporate accountability, corporate ethics, corporate codes of conduct, good corporate "citizenship," corporate crime, corporate reform, consumer protection, fixing regulatory agencies, or stakeholders.

IN THE UNITED STATES DISTRICT COURT FOR THE
_____DISTRICT OF _____

[CASE CITATION]

DRAFT – NOT FOR QUOTING OR REPRINTING WITHOUT PERMISSION OF THE AUTHORS.

BRIEF OF *AMICI CURIAE*

THE COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND, INC.
THE PROGRAM ON CORPORATIONS, LAW, AND DEMOCRACY, and
RICHARD L. GROSSMAN

SUPPORTING [PARTIES]

Thomas Alan Linzey, Esq.[1]
Daniel E. Brannen, Jr., Esq., *Of Counsel*
Community Environmental Legal Defense Fund, Inc.
2859 Scotland Road
Chambersburg, Pennsylvania 17201

Counsel for Amici Curiae Community Environmental Legal Defense Fund, Inc. and The Program On Corporations, Law, and Democracy

Richard L. Grossman, *pro se*

---

[1] This Brief is a work in process of a joint drafting project, involving Richard Grossman - co-founder of the Program on Corporations, Law, and Democracy (POCLAD) - Thomas Linzey, Esq. – Staff Attorney for the Community Environmental Legal Defense Fund, Inc. - and Daniel E. Brannen, Jr., Esq. Special thanks to Peter Kellman for his input into the drafting of this Brief. The Authors are eager to engage reviewers in dialogue about the contents and purposes of this Brief, and can be reached at info@celdf.org.

Table of Contents

Summary of Argument

The people of these United States created local, state, and federal governments to protect, secure, and preserve the people's inalienable rights, including their rights to life, liberty, and the pursuit of happiness. It is axiomatic that the people of these United States – the source of all governing authority in this nation - created governments also to secure the people's inalienable right that the many should govern, not the few. That guarantee — of a republican form of government —provides the foundation for securing people's other inalienable rights and vindicates the actions of people and communities seeking to secure those rights.

Corporations are created by State governments through the chartering process. As such, corporations are subordinate, public entities that cannot usurp the authority that the sovereign people have delegated to the three branches of government. Corporations thus lack the authority to deny people's inalienable rights, including their right to a republican form of government, and public officials lack the authority to empower corporations to deny those rights.

Over the past 150 years, the Judiciary has "found" corporations within the people's documents that establish a frame of governance for this nation, including the United States Constitution. In doing so, Courts have illegitimately bestowed upon corporations immense constitutional powers of the Fourteenth, First, Fourth, and

Fifth Amendments, and the expansive powers afforded by the Contracts and Commerce Clauses.

Wielding those constitutional rights and freedoms, corporations regularly and illegitimately deny the people their inalienable rights, including their most fundamental right to a republican form of government. Such denials are beyond the authority of the corporation to exercise.

Such denials are also beyond the authority of the Courts, or any other branches of government, to confer.

Accordingly, the constitutional claims asserted by the [x corporation] against [y government] must be dismissed because those claims deny the people's rights to life and liberty, and their fundamental right to self-governance.

Argument

I. It is Axiomatic That People Secure and Protect Their Inalienable Rights to Life, Liberty, Happiness, and a Republican Form of Government Through the Institution of Democratic Governments.

If there is one bedrock principle upon which the people of these United States established local, state, and federal governments, it is that governments are instituted to secure and protect the people's inalienable rights, including their right to a republican form of government.

As eloquently proclaimed by the Declaration of Independence,

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.[2]

THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

That principle, echoed by this nation's colonists throughout the Resolves of the Continental Congress,[3] early state Constitutions,[4] and the Articles of

---

[2] As Supreme Court Justice Thurgood Marshall once observed, however, while the Founding Fathers accurately described the people's inalienable rights, they failed to extend those rights to all people. In the *Bakke* decision, Marshall explained that "[t]he denial of human rights was etched into the American Colonies' first attempts at establishing self-government. . . . The self-evident truths and the unalienable rights were intended to apply only to white men." *Regents of the University of California v. Bakke*, 438 U.S. 265, 388-89 (1978) (Marshall, J., concurring).

[3] Continental Congress, *Declaration of Resolves*, 14 October 1774 (stating that colonial representatives "in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatsoever. . .").

[4] *See, e.g.,* VIRGINIA CONST., 29 June 1776 (declaring that "some regular adequate Mode of civil Polity [must be] speedily adopted" to reverse the "deplorable condition to which this once happy Country" has been reduced); Virginia Declaration of Rights, June 21, 1776 (stating that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot. . . deprive or divest their posterity; namely, the enjoyment of life and liberty. . . and pursuing and obtaining happiness and safety"); MASSACHUSETTS CONST., March 2, 1780 (proclaiming that "the end of the institution, maintenance and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquility, their natural rights, and the blessings of life").

Confederation,[5] is reflected throughout the writings of Locke, Hume, Montesquieu[6] that the early colonists used to deepen and strengthen the American Revolution – to frame their dispute as one in which the King and Parliament were incapable of providing a remedy premised on self-governance.[7]

The Revolution thus reflected the understanding that people, otherwise existing in a state of nature, do not relinquish their inalienable rights when

---

[5] Articles of Confederation, 1 March 1781 (declaring that the "said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare").

[6] Those democratic philosophies were, in turn, fomented by widespread Tudor rebellions and urban insurrections driven by popular movements that arose in England against monarchy and nobility. In response to expropriation, enclosures of the commons, impressments, enslavement, industrial exploitation, and unprecedented military mobilizations, England experienced the Cornish Rising (1497), the Lavenham Rising (1525), the Lincolnshire Rebellion (1536), the Ludgate Prison Riot (1581), the Beggars' Christmas Riot (1582), the Whitsuntide Riots (1584), the Plaisterers' Insurrection (1586), the Felt-Makers Riot (1591), Bacon's Rebellion in the Virginia Colony (1675-1676) and others. *See* Peter Linebaugh and Marcus Rediker, THE MANY-HEADED HYDRA: SAILORS, SLAVES, COMMONERS, AND THE HIDDEN HISTORY OF THE REVOLUTIONARY ATLANTIC 19, 136 (2000). "Years of attendance at town meetings had attuned the majority to elementary concepts, if not to detailed systems; to the idea of a state of nature, of a social compact, and of consent of the governed." Oscar Handlin and Mary Flug Handlin, COMMONWEALTH: A STUDY OF THE ROLE OF GOVERNMENT IN THE AMERICAN ECONOMY, MASSACHUSETTS 1774-1861 6-7 (1969).

[7] In demanding independence, the colonists abandoned other remedies that fell short of creating a new nation, including a request for representation in the English parliament and other proposals that continued to recognize the English King as the Sovereign. *See, e.g.*, *Letter from the House of Representatives of Massachusetts to Henry Seymour Conway*, February 13, 1768 (declaring that "[t]he people of this province would by no means be inclined to petition the parliament for representation") (*reprinted* in Harry Alonzo Cushing, ed., THE WRITINGS OF SAMUEL ADAMS 191 (1968)).

governments are instituted, but that governments are instituted specifically to guarantee and protect those freedoms and rights. Thomas Gordon once summarized that fundamental principle in the form of a question, asking:

> What is Government, but a Trust committed by All, or the Most, to One, or a Few, who are to attend upon the Affairs of All, that every one may, with the more Security, attend upon his own?

Thomas Gordon, CATO'S LETTERS, No. 38, July 22, 1721.

Early Americans used the U.S. Constitution to codify that understanding by declaring that a federal government would be formed by the States to protect and preserve people's rights, stating that:

> We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, *provide* for the common defence, *promote* the general Welfare, and *secure* the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America (emphasis added).

People struggling to drive civil rights for newly freed slaves into the Constitution following the Civil War fashioned the Fourteenth Amendment, which refers to inalienable rights as "privileges and immunities" of citizens. Through that Amendment, they sought to further guarantee the underlying principle – that governments are instituted by people to protect rights – by declaring:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV.

Through the Fourteenth Amendment, the abolitionists constitutionalized the people's inalienable rights to life, liberty, and happiness, driving the principles of the Declaration of Independence into the Constitution.[8] As scholar Robert J. Reinstein explained:

> [A] national political movement brought the Declaration of Independence "back into American life." The Declaration was the secular credo of the abolitionists. The Declaration not only supported their moral and political assaults on slavery but was the foundation of their constitutional theories.[9]

Thus, the founding documents of the States and the United States codify the understanding that governments are instituted to secure inalienable rights possessed by people, including their right to enjoy life and liberty, and the right to pursue and obtain happiness and safety. Underlying that principle is the belief that securing those freedoms and rights requires the institution of a republican form of government, and that the right to a republican form of government is a separate

---

[8] *See* Howard J. Graham, *Our 'Declaratory' Fourteenth Amendment*, 7 STANFORD L. REV. 3, 5 (1954) ("More and more, Section One is seen to have been a synthesis of the three clauses and concepts which spearheaded the organized antislavery movement's constitutional attack on slavery and racial discrimination"); Robert J. Reinstein, *Completing the Constitution: The Declaration of Independence, Bill of Rights and Fourteenth Amendment*, 66 TEMPLE L. REV. 361 (1993).

[9] Robert J. Reinstein, *Completing the Constitution: The Declaration of Independence, Bill of Rights and Fourteenth Amendment*, 66 TEMPLE L. REV. 361, 378-79 (1993); *See also*, Howard J. Graham, *The Early Antislavery Backgrounds of the Fourteenth Amendment*, EVERYMAN'S CONSTITUTION at ch. 4 (1968). After adoption of the Fourteenth Amendment by Congress, Speaker of the House Schuyler Colfax spoke in favor of Section 1: "I will tell you why I love it. It is because it is the Declaration of Independence placed immutably and forever in the Constitution." Cong. Globe, 39th Cong., 1st Sess. 2459 (1866).

guarantee.[10] That right guarantees that the powers of governance are vested in the majority, not in the hands of a privileged minority who might seek to use government to attain private goals.[11]

In the words of delegates writing the first Massachusetts Constitution, "[n]o man, nor corporation, or association of men, [shall] have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community" and that if governments are subverted for the "profit, honor, or private

[10] The guarantee of a republican form of government is a fundamental underpinning of this nation's founding documents. *See, e.g.*, U.S. CONST. art. IV, §4 (declaring that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government"); Virginia Declaration of Rights, June 12, 1776 (declaring that "all power is vested in, and consequently derived from, the People; that magistrates are their trustees and servants, and at all times amenable to them").

[11] *See, e.g*., James Otis, *The Rights of the British Colonies Asserted and Proved*, 1764 (declaring "let the origin of government be placed where it may – the end of it is manifestly the good of the whole. . ."); Montesquieu, SPIRIT OF LAWS, BK. 2, CH. 2, 1748 (stating that "[w]hen the body of the people is possessed of the supreme power, it is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy"); *See also*, *Statement of the Berkshire County, Massachusetts, Representatives*, November 17, 1778 (declaring the proposition "that the Majority should be governed by the Minority in the first Institution of Government is not only contrary to the common apprehensions of Mankind in general, but it contradicts the common Law of Justice and benevolence"); Fitzwilliam Byrdsall, THE HISTORY OF THE LOCO-FOCOS, OR EQUAL RIGHTS PARTY 169 (reprinted 1967) (quoting the New York Convention of the Equal Rights Party, which declared that "[t]he great object of a constitution is, to prevent the officers of government from assuming powers incompatible with the natural rights of man").

interest of any one man, family, or class of men," then the fundamental principle underlying the institution of governments is usurped.[12]

II. Corporations are Created by State Governments as Subordinate, Public Entities Through the Chartering Process, and Thus Cannot Act to Deny People's Rights to Safety, Liberty, the Pursuit of Happiness, or a Republican Form of Government Within this Nation's Frame of Governance.

The cause of the American Revolution was the systemic usurpations of the rights of colonists by the English King and Parliament.[13] Those usurpations occurred primarily through the King's empowerment of eighteenth century corporations of global trade - such as the East India Company - and through Parliamentary Acts taxing colonial trade. Oft-cited as the final spark of the Revolutionary War, the Boston Tea Party was the direct result of colonial opposition to the East India Company's use of the English government to enable the Company to monopolize the tea market in the colonies. [14]

The signing of the Declaration of Independence transformed crown

---

[12] MASSACHUSETTS CONST., Arts. VI and VII (March 2, 1780). *See also*, Virginia Declaration of Rights at 4 (June 12, 1776); Pennsylvania Constitution of 1776 at fifth provision (reprinted in Pennsylvania Legislative Reference Bureau, CONSTITUTIONS OF PENNSYLVANIA/ CONSTITUTION OF THE UNITED STATES 235 (1967)).

[13] *See, e.g.,* THE DECLARATION OF INDEPENDENCE, para. 1 (U.S. 1776) (listing the grievances of the colonists).

[14] James K. Hosmer, SAMUEL ADAMS 212 (stating that the English Parliament hoped that "the prosperity of the East India Company would be furthered, which for some time past, owing to the colonial non-importation agreements, had been obliged to see its tea accumulate in its warehouses, until the amount reached 17,000,000 pounds").

corporations and royal proprietorships into constitutionalized states. Elected State legislators, possessing personal knowledge of the power of English trading corporations,[15] worked to ensure that corporations within the new nation would be controlled and defined exclusively by legislatures.[16]

Accordingly, people made certain that legislatures issued charters, one at a time and for a limited number of years.[17] They kept a tight hold on corporations by spelling out rules each business had to follow, holding business owners liable for harms or injuries, and revoking corporate charters.[18]

---

[15] The East India Company, and its actions in other countries, features prominently in early colonial pamphlets. *See, e.g.*, THE ALARM, Number II (October 9, 1773) (declaring that "the East India Company obtained their exclusive privilege of Trade to that Country, by Bribery and Corruption. Wonder not then, that Power thus obtained, at the Expence of the national Commerce, should be used to the most tyrannical and cruel Purposes. It is shocking to Humanity to relate the relentless Barbarity, practiced by the Servants of that Body, on the helpless Asiatics, a Barbarity fearce equaled even by the most brutal Savages, or Cortez, the Mexican Conquerer").

[16] Richard L. Grossman, *Wresting Governing Authority from the Corporate Class: Driving People into the Constitution*, 1 SEATTLE JOURNAL FOR SOCIAL JUSTICE 147, 149-150 (Spring/Summer 2002); Gregory A. Mark, *The Personification of the Business Corporation in American Law*, 54 U.CHICAGO L. REV. 1441 (1987).

[17] *See Louis K. Liggett Co., v. Lee*, 288 U.S. 517 (1933) (Brandeis, J., dissenting) (stating that "at first the corporate privilege was granted sparingly; and only when the grant seemed necessary in order to procure for the community some specific benefit otherwise unattainable").

[18] For a summary of the history of early citizen control of corporations, *see* Richard L. Grossman and Frank T. Adams, TAKING CARE OF BUSINESS: CITIZENSHIP AND THE CHARTER OF INCORPORATION 6-18 (5th Ed. 2002); *See also*, Adolf A. Berle and Gardiner C. Means, THE MODERN CORPORATION AND PRIVATE PROPERTY (1933); Edwin Merrick Dodd, AMERICAN BUSINESS CORPORATIONS UNTIL 1860 (1934); Louis Hartz, ECONOMIC POLICY AND DEMOCRATIC THOUGHT, PENNSYLVANIA, 1776-

Side by side with control and authority over corporations – exercised through their elected legislators – the people experimented with various forms of enterprise and finance. Artisans and mechanics owned and managed diverse businesses; farmers and millers organized profitable cooperatives; shoemakers created unincorporated business associations.[19] Towns routinely promoted agriculture and manufactures. They subsidized farmers, public warehouses, and municipal markets, protected watersheds, and discouraged overplanting.[20]

Legislatures also chartered profit-making corporations to build turnpikes, canals, and bridges, declaring that corporations could only be chartered for "public purposes."[21] By the beginning of the 1800's, only some three hundred such charters had been granted.

Many people argued that under the Constitution no business could be granted special corporate privileges. Others worried that once incorporators amassed wealth, they would control jobs and markets, buy the newspapers, and dominate elections and the courts.[22]

1860 (1948); and Thomas Frost, A TREATISE ON THE INCORPORATION AND ORGANIZATION OF CORPORATIONS 1 (1908).

[19] Oscar Handlin and Mary Flug Handlin, COMMONWEALTH: A STUDY OF THE ROLE OF GOVERNMENT IN THE AMERICAN ECONOMY, MASSACHUSETTS 1774-1861 125 (1969).

[20] *Id*. at 65-66.

[21] Robert Hamilton, THE LAW OF CORPORATIONS 6 (1991).

[22] Richard L. Grossman and Frank T. Adams, TAKING CARE OF BUSINESS: CITIZENSHIP AND THE CHARTER OF INCORPORATION 14 (2002) (quoting a New Jersey

Premised upon the widespread public knowledge of the powers wrought by English corporations and the people's opposition to them, early legislators granted few charters, and only after long, hard debate. Legislators usually denied charters to would-be incorporators when communities opposed the proposed corporation.[23]

People shared the belief that granting charters was their exclusive right. Moreover, as the Supreme Court of Virginia reasoned in 1809, if the applicants'

> object is merely "private" or selfish; if it is detrimental to, or not promotive of, the public good, they have no adequate claim upon the legislature for the privileges.

Morton J. Horwitz, THE TRANSFORMATION OF AMERICAN LAW, 1780-1860 112 (1977).

States limited corporate charters to a set number of years. Maryland legislators restricted manufacturing charters to fifty years, and most others to thirty. Pennsylvania limited manufacturing charters to twenty years. Unless a legislature renewed an expiring charter, the corporation was dissolved and its assets divided among shareholders.

---

newspaper which declared that "the Legislature ought cautiously to refrain from increasing the irresponsible power of any existing corporations, or from chartering new ones," else people would become "mere hewers of wood and drawers of water to jobbers, banks, and stockbrokers"); *See Liggett Co. v. Lee*, 288 U.S. 517, 565 (1933) (Brandeis, J., dissenting) (explaining that "[t]hrough size, corporations. . . have become an institution – an institution which has brought such concentration of economic power that so-called private corporations are sometimes able to dominate the state").

[23] Richard L. Grossman and Frank T. Adams, TAKING CARE OF BUSINESS: CITIZENSHIP AND THE CHARTER OF INCORPORATION 7 (2002).

Citizen authority clauses dictated rules for issuing stock, for shareholder voting, for obtaining corporate information, for paying dividends and keeping records. They limited capitalization, debts, land holdings, and sometimes profits. They required a company's accounting books to be turned over to a legislature upon request.

Interlocking directorates were outlawed. Shareholders had the right to remove directors at will. Some state laws required banks to make loans for local manufacturing, fishing, and agricultural enterprises, and to the states themselves. Banking corporations were forbidden to engage in trade. Most state legislatures provided that directors and stockholders remained personally liable for debts and harms caused by their corporations. One corporation could not own another, or own shares in other corporations. In short, corporations were nothing more than what the people defined them to be through legislation, and possessed only those rights granted by such legislation.[24]

The people of these United States did not want business owners hidden behind legal shields, but in clear sight. As the Pennsylvania legislature declared in 1834:

[24] Richard L. Grossman and Frank T. Adams, TAKING CARE OF BUSINESS: CITIZENSHIP AND THE CHARTER OF INCORPORATION 6-9 (2002); *See* Gregory A. Mark, THE PERSONIFICATION OF THE BUSINESS CORPORATION IN AMERICAN LAW, 54 U. Chicago L. Rev. 1441 (1987).

> A corporation in law is just what the incorporating act makes it. It is the creature of the law and may be moulded to any shape or for any purpose that the Legislature may deem most conducive for the general good.

Carter Goodrich, THE GOVERNMENT AND THE ECONOMY, 1783-1861 374 (1967).

People believed that when a corporation subverted the fundamental purpose for which governments were instituted, legislatures should dissolve the corporation. Accordingly, all states adopted corporate charter revocation laws to codify the common law writ of *quo warranto* ("by what authority") – not only to revoke the charters of specific corporations, but to recognize that a corporation exceeding its limited authority injures the entire body politic.[25]

This short history of corporations in these United States reveals that corporations - because of the American revolutionaries' successful resistance to illegitimate rule - were chartered as merely one of many subordinate, public entities

---

[25] *See, e.g., People v. North River Sugar Ref. Co.*, 24 N.E. 834, 835 (NY 1890) (explaining that the court must determine whether a corporation has "exceeded or abused its powers" and if so, whether "that excess or abuse threatens or harms the public welfare"); *Wilmington City Railway Co. v. People's Railway Co.*, 47 A. 245, 248 (Del. Ch. 1900) (proclaiming that the remedy of *quo warranto* extends back to "time whereof the memory of man runneth not to the contrary").

All fifty states, plus the District of Columbia, have retained fragments of *quo warranto* laws. The authority over the creation and dissolution of corporations has always been a legislative power. *See* Thomas Linzey, *Awakening a Sleeping Giant: Creating a Quasi-Private Cause of Action for Revoking Corporate Charters in Response to Environmental Violations*, 13 PACE ENVT'L L. REV. 219, 223 (1995). Contemporary attempts to enforce portions of those laws, which at most offer a remedy solely for the "misuse and abuse" of a corporate charter by a single giant corporation, have been unsuccessful. *See, e.g., CELDF v. WMX, Technologies, et al*., 1074 M.D. 1996 (Commonwealth Court of Pennsylvania 1997); and *William Wynn, ex. rel., v. Phillip Morris, Inc. et al.*, CV-98-03295 (Jefferson County, Alabama Circuit Court 1999).

used by the people to achieve the fundamental purposes for which governments were instituted.

It is well settled law that corporations are creations of the state.[26] The United States Supreme Court has reaffirmed the principle that corporations are "creatures of the state" in at least thirty-six different rulings.[27] It is also well-settled law that the

---

[26] *See St. Louis, I.M. & S Ry. Co. v. Paul*, 173 U.S. 404 (1899) (declaring that corporations are "creations of state"); *The Bank of Augusta v. Earle*, 38 U.S. 519 (1839) (stating that "corporations are municipal creations of states"); *United States v. Morton Salt Co*., 338 U.S. 632, 650 (1950) (explaining that corporations "are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege as artificial entities"); *Hale v. Henkel*, 201 U.S. 43, 75 (1906) (declaring that "the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. . . . Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation"); *Chincleclamouche Lumber & Broom Co. v. Commonwealth*, 100 Pa. 438, 444 (Pa. 1881) (stating that "the objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country"); *See also, People v. North River Sugar Refining Company*, 24 N.E. 834 (NY 1890) (declaring that "[t]he life of a corporation is, indeed, less than that of the humblest citizen. . ."); *F.E. Nugent Funeral Home v. Beamish*, 173 A. 177 (Pa. 1934) (declaring that "[c]orporations organized under a state's laws. . . depend on it alone for power and authority"); *People v. Curtice*, 117 P. 357 (Colo. 1911) (declaring that "[i]t is in no sense a sovereign corporation, because it rests on the will of the people of the entire state and continues only so long as the people of the entire state desire it to continue"); *State v. Walmsley*, 162 So. 826 (La. 1935) (stating that corporations are "mere creatures of the Legislature and are entirely subject to the legislative will").

[27] *See Virginia Bankshares v. Sandberg*, 501 U.S. 1083 (1991); *Kamen v. Kember Fin. Servs*., 500 U.S. 90 (1991); *Braswell v. United States*, 487 U.S. 99 (1988); *Ball v. James*, 451 U.S. 355 (1981); *Burks v. Lasker*, 441 U.S. 471 (1979); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462 (1977); *Cort v. Ash*, 422 U.S. 66 (1975); *United Steelworkers of America v. R.H. Bouligny, Inc*., 382 U.S. 145 (1965); *Shapiro v. United States*, 335 U.S. 1 (1948); *Coleman v. Miller*, 307 U.S. 433 (1939); *Williams v. Baltimore*, 289

Constitution not only protects people against the "State itself," but also against "all of its creatures." *See West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 637 (1943).

As public creations, corporations lack any authority within this nation's frame of governance to deny people's inalienable rights to life, liberty, safety, security, health, and freedom, or to interfere with the operation of the people's republican governments.

III. Over the Past 150 Years, the Judiciary Has "Found" Corporations Within the U.S. Constitution, and Bestowed Constitutional Rights Upon Them.

Over the past 150 years of existence of the United States, the judiciary has conferred constitutional protections - once intended to protect only natural persons -

---

U.S. 36 (1933); *Ferry v. Ramsey*, 277 U.S. 88 (1928); *Essgee Co. of China v. United States*, 262 U.S. 151 (1923); *Yazoo & M.V.R.Co. v. Clarksdale*, 257 U.S. 10 (1921); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911); *Wilson v. United States*, 221 U.S. 361 (1911); *Chicago, B&Q.R.Co. v. McGuire*, 219 U.S. 549 (1911); *Hale v. Henkel*, 201 U.S. 43 (1906); *Worcester v. Worcester C.S.R.Co.*, 196 U.S. 539 (1905); *Terre Haute & I.R.Co. v. Indiana*, 194 U.S. 579 (1904); *Carstairs v. Cochran*, 193 U.S. 10 (1904); *Atkin v. Kansas*, 191 U.S. 207 (1903); *Fidelity Mut. Life Asso. v. Mettler*, 185 U.S. 308 (1902); *Hancock Mut. Life Ins. Co. v. Warren*, 181 U.S. 73 (1901); *Jellenik v. Huron Copper Mining Co.*, 177 U.S. 1 (1900); *Woodruff v. Mississippi*, 162 U.S. 291 (1896); *Moran v. Sturges*, 154 U.S. 256 (1894); *New Orleans v. New Orleans Water Works Co.*, 142 U.S. 79 (1891); *Merrill v. Monticello*, 138 U.S. 673 (1891); *Philadelphia & Southern Mail S.S. Co. v. Pennsylvania*, 122 U.S. 326 (1887); *Sinking-Fund Cases*, 99 U.S. 700 (1878); *Railroad Co. v. Maryland*, 88 U.S. 456 (1874); *Dodge v. Woolsey*, 59 U.S. 331 (1855); *Bank of Augusta v. Earle*, 38 U.S. 519 (1839); *Briscoe v. President & Directors of Bank of Kentucky*, 36 U.S. 257 (1837).

upon corporations. The method by which the judiciary has conferred rights upon corporations has consisted of "finding" corporations in the Fourteenth Amendment, the First Amendment, the Fourth Amendment, the Fifth Amendment, and the Contracts and Commerce Clauses of the Constitution.[28]

A. "Finding" Corporations in the Fourteenth Amendment

After political expedience convinced Abraham Lincoln to use the Civil War to outlaw slavery, people forced the federal government to pass the Civil Rights Act of 1866 and constitutional amendments to give rights to newly freed slaves, which the drafters of the Constitution failed to define as "persons."[29] Adopted in 1868, Section 1 of the Fourteenth Amendment says:

---

[28] Corporations, of course, are not mentioned in the Constitution.

[29] The framers of the Constitution codified slavery in Article I, §2 (apportioning slaves as equivalent to three-fifths of a person for purposes of representation), Article I, §9 (ensuring that importation of slaves would be legal until at least 1808), and Article IV, §2 (declaring that "[n]o person held in Service or Labour in one State, under the laws thereof, escaping into another, shall, in Consequence of any regulation therein, be discharged from such Service of Labour, but shall be delivered up on Claim of the Party to whom such Service of Labour may be due"); *Regents of the University of California v. Bakke*, 438 U.S. 265, 388-89 (1978) (Marshall, J., concurring). The 1793 and 1850 Fugitive Slave Acts were adopted to further those constitutionally embedded property rights of slave owners. Those Acts paid a reward - from public monies - to federal marshals for each slave captured, prohibited any trial by jury for the slave, and prohibited the slave from testifying at any hearing held under the Acts. *See* The Avalon Project at Yale Law School, *The Fugitive Slave Act of 1850* (2002).

It is also important to remember that "[t]he denial of human rights was etched into the American Colonies' first attempts at establishing self-government. . . . The

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The guarantees of the Fourteenth Amendment have been expanded to include a litany of personal liberty rights.[30]

Working for corporate clients enriched and empowered by the Civil War, lawyers began persuading judges to use the language of the Fourteenth Amendment to overturn state legislation originally intended to subordinate corporations. Their efforts led to a transformation of the law, undermining the republican frame of governance. As Justice Brennan has declared, "by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of

---

self-evident truths and the unalienable rights were intended to apply only to white men." *Bakke* at 388-389.

[30] *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982) (expanding Fourteenth Amendment guarantees to illegal aliens residing in the United States); *Poe v. Ullman*, 367 U.S. 497, 516 (1961) (Douglas, J., dissenting) (declaring that "[w]hen the Framers wrote the Bill of Rights, they enshrined in the form of constitutional guarantees those rights – in part substantive, in part procedural – which experience indicated were indispensable to a free society"); *Meyer v. State of Nebraska*, 262 U.S. 390, 399 (1923) (declaring that the Fourteenth Amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men").

constitutional and statutory analysis." *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 687 (1978).

In *San Mateo v. Southern Pacific R. Co*., 13 F. 722 (C.C.D. Cal. 1882), corporate lawyers attacked a provision of the California constitution that assessed property taxes against railroad corporations differently from assessments for non-corporate properties. Attorneys for the railroad companies argued that by taxing their property differently from the property of natural persons, California violated corporate "rights" secured by the Equal Protection Clause of the Fourteenth Amendment.

When the case reached oral argument in the Supreme Court in 1885, Roscoe Conkling, a former member of the joint congressional committee that had crafted the Fourteenth Amendment - and lawyer for the Southern Pacific Railroad Company - suggested to the Court that the committee had corporations in mind when it put pen to paper in 1866: "[a]t the time the Fourteenth Amendment was ratified," Conkling alleged, "individuals and joint stock companies were appealing for congressional and administrative protection against invidious and discriminating State and local taxes." Conkling then intimated that the drafters of the Fourteenth Amendment had

purposely used the word "persons" - instead of "citizens" - to specifically shield corporations from those State and local taxes.[31]

The parties settled *San Mateo* before the Supreme Court announced a decision. During oral argument in another California railroad taxation case several years later, *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886), Chief Justice Morrison Waite accepted Conkling's proclamation, declaring:

> [t]he Court does not wish to hear arguments on the question whether the provision of the 14th Amendment to the Constitution which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to corporations. We are all of the opinion that it does.[32]

---

[31] Howard J. Graham, *The 'Conspiracy Theory' of the Fourteenth Amendment*, 47 YALE L.J. 371 (1938) (explaining that Conkling's argument was baseless, stating that his argument constituted the "still almost incredible, misquotation and forgery. . . [because] nowhere does Conkling explicitly say that the Committee regarded corporations as 'persons'; nowhere does he say that the members framed the due process and equal protection clauses with corporations definitely in mind. . . nor [did] anyone at any time or under any circumstances, so far as the historical record indicates, ever use the word 'citizen' in any draft of the equal protection or due process clause." Graham adds that in Conkling's argument, he explicitly admitted that "those who devised the 14th Amendment may have builded *better than they knew*" and that Conkling "misquoted the original Journal in his argument, and it is almost impossible to believe that he did not do this intentionally") (emphasis added).

[32] Howard J. Graham, *Builded Better Than They Knew*, 17 U.PITT L. REV. 537 (1956). While Chief Justice Waite's announcement was not part of the written opinion in *Santa Clara*, courts have repeatedly upheld the proposition that corporations are "persons" for purposes of Fourteenth Amendment protections. The U.S. Supreme Court has reiterated and reinforced the *Santa Clara* holding in at least twenty-two different cases. *See, e.g. Minneapolis & St. Louis Railroad Company v. Beckwith*, 129 U.S. 26, 28 (1889) (declaring that "we admit the soundness" of the position of *Santa Clara*); *Covington & L. Turnpike Road Co. v. Sandford,* 164 U.S. 578 (1896) (declaring that "it is now settled that corporations are persons, within the meaning of

Three years later, the Court "found" corporations in the Due Process Clause of the Fourteenth Amendment and bestowed Due Process protections upon corporations. *Minneapolis & St. Louis Railroad Company v. Beckwith*, 129 U.S. 26 (1889). The inclusion of corporations within the Equal Protection and Due Process Clauses of the Fourteenth Amendment, however, has been challenged by even Supreme Court jurists.[33]

---

the constitutional provisions forbidding the deprivation of property without due process of law, as well as a denial of the equal protection of the laws"), *Smyth v. Ames*, 169 U.S. 466 (1898) (declaring "that corporations are persons within the meaning of this amendment is now settled"), *Hale v. Henkel*, 201 U.S. 43 (1906) (declaring that the principle that "corporations are, in law, for civil purposes, deemed persons, is unquestionable"); *Kentucky Finance Corporation v. Paramount Auto Exchange Corporation*, 262 U.S. 544, 550 (1923) (declaring that "a state has no more power to deny to corporations the equal protection of the law than it has to individual citizens"); *Power Mfg. Co. v. Saunders*, 274 U.S. 490 (1927) (stating that Equal Protection guarantees "extend to corporate, as well as natural persons").

[33] Supreme Court justices have authored extensive dissenting opinions challenging the discovery of corporations in the Fourteenth Amendment. *See Connecticut General Life Insurance Co. v. Johnson*, 303 U.S. 77, 85-90 (1938) (Black, J., dissenting) (declaring that "[n]either the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection"); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 576-581 (1949) (Douglas, J., and Black, J., dissenting) (declaring that "I can only conclude that the *Santa Clara* case was wrong and should be overruled"); *See also, Hale v. Henkel*, 201 U.S. 43, 78 (1906) (Harlan, J., concurring) (declaring that "in my opinion, a corporation – an artificial being, invisible, intangible, and existing only in contemplation of law – cannot claim the immunity given by the 4th Amendment; for it is not a part of the "people" within the meaning of that Amendment. Nor is it embraced by the word "persons" in the Amendment"); *Bell v. Maryland*, 378 U.S. 226 (1964) (Douglas, J., dissenting) (declaring that "[t]he revolutionary change effected by affirmance in these sit-in cases would be much more damaging to an open and free society than what the Court did when it gave the corporation the sword and shield of the Due Process and Equal Protection Clauses of the Fourteenth Amendment"); *First*

Thus, at least from the standpoint of Supreme Court caselaw, did corporations become "persons" under the Constitution, empowered to wield corporate Due Process and Equal Protection rights under the authority of the Fourteenth Amendment, just like natural persons. Attempts by the legal community to justify those conferrals paralleled those judicial developments.[34]

B. Corporations and the Bill of Rights

Prior to the submission of the Constitution to state legislatures for ratification, eight states had already prefaced their own Constitutions with a Bill of Rights. Accordingly, many states conditioned their ratification of the Constitution upon the

---

National Bank of Boston v. Bellotti, 435 U.S. 765, 822 (1978) (Rehnquist, J., dissenting) (declaring that "[t]his Court decided at an early date, with neither argument nor discussion, that a business corporation is a 'person' entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment").

[34] During this period, legal theorists sought to legitimate corporations as having natural rights. According to Professor Morton Horwitz, "[b]eginning in the 1890's and reaching a high point around 1920, there is a virtual obsession in the legal literature with the question of corporate personality. Over and over again, legal writers attempted to find a vocabulary that would enable them to describe the corporation as a real or natural entity whose existence is prior to, and separate from, the state." Morton Horwitz, The TRANSFORMATION OF AMERICAN LAW, 1870-1960 101 (1992). Professor Horwitz explains that "[t]he basic problem of legal thinkers after the Civil War was how to articulate a conception of property that could accommodate the tremendous expansion in the variety of forms of ownership spawned by a dynamic industrial society. . . The efforts by legal thinkers to legitimate the business corporation during the 1890's were buttressed by a stunning reversal in American economic thought – a movement to defend and justify as inevitable the emergence of large-scale corporate concentration." *Id*. at 80, 145.

addition of a Bill of Rights to the document.[35] In 1789, state delegates succeeded in amending the U.S. Constitution with a Bill of Rights that prohibited the federal government from interfering with crucial individual freedoms, including the freedoms of speech, assembly, and petition, protection from unreasonable searches and seizures, and the right to due process in criminal trials.

As Franklin Delano Roosevelt once keenly observed, "the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities." The Public Papers and Addresses of Franklin D. Roosevelt 366 (1941).

(1). "Finding" Corporations in the First Amendment

The First Amendment to the U.S. Constitution declares, in part, that governments shall "make no law. . . abridging the freedom of speech." U.S. CONST. amend. I

In *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Supreme Court "found" corporations in the First Amendment when the Court threw out a Massachusetts law that prohibited corporations from spending money to influence

[35] Kurland and Lerner, eds., THE FOUNDERS' CONSTITUTION 425 (1987).

legislation unrelated to their business. The ruling nullified the laws of thirty states that had adopted similar legislation.[36]

Dissenting in *Bellotti*, Justice White described the impact of this decision:

> It has long been recognized, however, that the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process . . . . The State need not permit its own creation to consume it.

Bellotti, 435 U.S. at 809 (White, J., dissenting).

Courts since *Bellotti* have explored the contorted metes and bounds of political[37], commercial[38] and negative corporate[39] speech rights without revealing

---

[36] *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *See Bellotti* at 822 (Rehnquist, J., dissenting) (declaring that "the Congress of the United States, and the legislatures of 30 other States of this Republic have considered the matter, and have concluded that restrictions upon the political activity of business corporations are both politically desirable and constitutionally permissible"). The *Bellotti* decision overturned "similar laws in thirty other states, thus facilitating corporate speech on public policy issues and establishing a legal principle of the corporation's rights" to protections afforded by the First Amendment. Dan Kennedy, *Silent Swoosh*, Boston Phoenix, May 2, 2003.

[37] *See, e.g., Jacobus v. State of Alaska*, No. 01-35666 (9th Cir. 2003) (declaring that "corporations have rights under the First Amendment" and then proceeding to a discussion of the extent of those rights in electoral activities, without explaining the underlying justification for the conferral of rights).

[38] *See, e.g., Central Hudson Gas & Electric Corp., v. Public Utilities Comm'n*, 447 U.S. 557 (1980) **(**declaring that a state regulation banning all utility corporations from promoting the use of electricity in advertisements – adopted during the mid-1970's energy crisis – violated the "commercial speech" of the corporation, while failing to explain the underlying justification for the conferral of First Amendment rights upon corporations); *See also, Virginia Board of Pharmacy v. Virginia Citizens*

why or how the Constitution compels the conclusion that corporations must be empowered by the First Amendment.[40] They have also avoided any discussion of how the exercise of those rights by corporations negates the ability of people to exercise their own First Amendment rights – thus preventing people from using their own free speech to secure their inalienable rights to life and liberty.

In addition, Courts have avoided the interrelated discussion of how the conferral of First Amendment rights upon corporations involuntarily subjects the majority to the blunt force of the speech of the corporate minority – enabled through the massive wealth of corporations – thus nullifying the fundamental guarantee of a republican form of government.

(2). "Finding" Corporations in the Fourth Amendment

The Fourth Amendment to the U.S. Constitution declares that "[t]he right of

---

Consumer Council, Inc., 425 U.S. 748 (1976) (declaring unconstitutional a Virginia statute that prohibited price advertising of prescription drugs).

[39] *See, e.g., Pacific Gas & Elec. Co. v. Public Utilities Comm'n*, 475 U.S. 1 (1986) (declaring that the First Amendment created a corporation's "negative speech" rights, which prevented utility ratepayers from using empty space within the monthly billing envelopes, without discussing the justification for the judicial conferral of First Amendment rights); *But see, Id.* at 25 (Rehnquist, J., dissenting) (declaring that "[n]or do I believe that negative free speech rights, applicable to individuals and perhaps the print media, should be extended to corporations generally").

[40] *But see, Salyer Land Co. v. Tulare Lake Basin Water Stor. District*, 410 U.S. 719 (1973) (Douglas, J., dissenting) (declaring that "it is unthinkable in terms of the American tradition that corporations should be admitted to the franchise. . . the result [would be] a corporate political kingdom").

the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. amend. IV.

The Supreme Court "found" corporations in the Fourth Amendment in *Hale v. Henkel*, 201 U.S. 43 (1906). There, the Court nullified a grand jury subpoena issued under the Sherman Anti-Trust Act during an investigation into unlawful trade and price fixing actions of tobacco corporations. The subpoena ordered those corporations to produce documents. The Court quashed the subpoena, ruling that it constituted an "unreasonable search and seizure" of the corporations in violation of the guarantees of the Fourth Amendment.

As with its First Amendment decisions, the Supreme Court - in this case and subsequent cases - has collaterally focused on the definition of "unreasonable search" rather than explaining why corporations should be constitutionally shielded from inspections and other searches that seek to protect the health, safety, and welfare of the people.[41] The Courts have also not explored how granting Fourth Amendment

[41] *See, e.g., Dow Chemical Corporation v. U.S.*, 476 U.S. 337 (1986) (ruling that the Dow Chemical Corporation was entitled to expansive Fourth Amendment protections when the Environmental Protection Agency flew planes over the corporation's manufacturing facilities to ensure compliance with the Clean Air Act. Instead of explaining why the corporation was entitled to Fourth Amendment protections, the Court struck the challenge on the basis that the overflights were not "searches"); *See also, Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *California Bankers Assn. v. Shultz*, 416 U.S. 21 (1974); *Federal Trade Comm'n v. American Tobacco Co*., 264 U.S. 298 (1924); *Consolidated Rendering Co. v. Vermont*, 207 U.S. 541 (1908); *Go-Bart Co. v. United States*, 282 U.S. 344 (1931); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920).

rights to corporations subverts republican government by enabling a corporate minority to unilaterally exempt corporations from laws adopted by the majority.

(3). "Finding" Corporations in the Fifth Amendment

The Fifth Amendment to the U.S. Constitution declares, in part, that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb. . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

The Supreme Court "found" corporations in the Fifth Amendment's Due Process Clause in *Noble v. Union River Logging R. Co*., 147 U.S. 165 (1893), in which the Court ruled that the grant of a public land right-of-way to a railroad corporation by the Secretary of the Interior could not be revoked by a subsequent Secretary without extending due process of law to the corporation.[42] The Court

[42] Even prior to *Noble*, however, the United States Supreme Court had *implicitly* found that corporations were entitled to constitutionally derived due process rights under the Fifth Amendment. *See United States v. Union Pac. R.Co*. 98 U.S. 569, 606, 616 (1878) (holding that Congressional action to recover public monies invested in the Union Pacific Railroad Company circumvented due process guarantees for the corporation and its managers); *Sinking-Fund Cases*, 99 U.S. 700, 718-19 (1878) (holding that Congress, "equally with the States, [is] prohibited from depriving persons or corporations of property without due process of law"); and *Newport and Cincinnati Bridge Co. v. United States*, 105 U.S. 470, 480 (1881) **(**holding that a chartered bridge corporation possessed a vested right that could not arbitrarily be removed by an Act of Congress).

"found" corporations in the Takings Clause in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), in which the Court ruled that coal corporations must be compensated for property value lost due to laws protecting homes from mine subsidence.[43] The Court "found" corporations in the Double Jeopardy Clause in *Fong Foo v. United States*, 369 U.S. 141 (1962), in which the Court ruled that a corporation could not be retried after a court directed a judgment of acquittal during the presentation of evidence by the government.[44]

Courts have, however, avoided any discussion of how the exercise of judicially conferred Fifth Amendment rights by corporations prevents people from governing to protect their health, safety, and welfare. Courts have also avoided any discussion of how the use of Fifth Amendment protections by corporations enables the corporate minority to evade legislative measures adopted by the majority to

---

[43] *Mahon* is most often cited by the legal community for the proposition that environmental regulations "take" property under the Fifth Amendment, thus resulting in the necessity of compensation for the property owner. *Mahon*, however, is the first case in which the Court declared that the Fifth Amendment mandated that *corporations* be compensated for the diminishment in property value resulting from the application of regulations seeking to protect the health, safety, and welfare of people and the natural environment.

[44] In *Fong Foo*, the Standard Coil Products Corporation was indicted for "knowingly and willfully" falsifying, and conspiring "with others to falsify, tests of radiosondes (electronic devices for furnishing weather data) being manufactured" for the Army Signal Supply Agency. *See In the Matter of United States of America*, 286 F.2d 556 (1st Cir. 1961) (lower court decision); *See also United States v. Martin Linen Supply Co*., 430 U.S. 564 (1977) (holding in favor of a textile corporation that invoked the double jeopardy clause of the Fifth Amendment to avoid retrial in a criminal antitrust action).

secure those interests – an entitlement that negates the people's right to a republican form of government.

(4). "Finding" Corporations in the Contracts and Commerce Clauses

The Contracts Clause of the Constitution states that "No state shall . . . pass any . . . law impairing the obligation of contracts." (Const. Art. I, § 10.) In *Trustees of Dartmouth College v. Woodward* in 1816, the U.S. Supreme Court used the Contracts Clause to prevent the people of New Hampshire from turning private Dartmouth College into a public university.[45] The citizens of New Hampshire had decided that public universities were a prerequisite to maintaining a republican form of government,[46] and the New Hampshire Supreme Court had vindicated the people's authority to transform the College.[47]

---

[45] *Dartmouth College v. Woodward*, 4 Wheat. 518 (1816).

[46] *See* NEW HAMPSHIRE CONST., Art. 83 (declaring that "knowledge and learning. . . being essential to the preservation of a free government . . .it shall be the duty of the legislators and magistrates . . . to cherish the interests of literature and the sciences, and all seminaries and public schools"); *Meyer v. State of Nebraska*, 262 U.S. 390, 400 (1923) (declaring that "[t]he American people have always regarded education and the acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged'").

[47] Nathaniel Adams, REPORTS ON CASES ARGUED AND DETERMINED IN THE SUPERIOR COURT OF JUDICATURE FOR THE STATE OF NEW-HAMPSHIRE 135 (1819) (quoting Chief Justice William M. Richardson, author of the New Hampshire Supreme Court decision in *Dartmouth*, who declared for the Court that:

The Commerce Clause states that "The Congress shall have power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." (Const. Art. I, § 8.) The Supreme Court has concocted, within the Commerce Clause, a "Dormant Commerce Clause" that enables corporations to use the Courts to overturn state laws adopted to protect the health, safety, and welfare of people and communities.[48] As demonstrated in the second part of this Brief, the Commerce and Contracts Clauses are regular weapons in the arsenal of corporate

---

> I cannot bring myself to believe, that it would be consistent with sound policy, or ultimately with the true interests of literature itself, to place the great public institutions, in which all the young men, destined for the liberal professions, are to be educated, within the absolute control of a few individuals, and out of the control of the sovereign power – not consistent with sound policy, because it is a matter of too great moment, too intimately connected with the public welfare and prosperity, to be thus entrusted in the hands of a few. The education of the rising generation is a matter of the highest public concern, and is worthy of the best attention of every legislature. . . . We are therefore clearly of opinion, that the charter of Dartmouth College, is not a contract, within the meaning of this clause in the Constitution of the United States).

See Peter Kellman, *You've Heard of Santa Clara, Now Meet Dartmouth*, DEFYING CORPORATIONS, DEFINING DEMOCRACY 89 (2001) (explaining that "[a]n important component of republican philosophy is that a republican form of government requires an educated populace. These republicans wanted to insure that a college education would be available for their children, and that the content of education would be determined by a *public* process, not a *private* one") (emphasis in original).

[48] For a case history of how the Commerce Clause was wielded in the 1880's by oleomargarine corporations and the Courts to strike down state laws regulating the manufacture and sale of oleomargarine, *see* Jane Anne Morris, BABY NAFTA 1-3 (2002) (On file with Authors). As Morris concludes, the Commerce Clause has served as the template for international trade agreements that empower international trade tribunals to nullify local, state, and national laws in the name of corporate commerce.

constitutional rights, wielded by corporations through the Courts, to deny the inalienable rights of people to life, liberty, and property.

Courts have avoided any discussion of how Commerce and Contracts rights, wielded by corporations, enable corporate managers to strike down laws fashioned by the majority – thus negating the Constitutional guarantee of a republican government.

IV. Corporations Illegitimately Wielding Constitutional Rights of Persons Against People and Communities Regularly Deny the People Their Inalienable Rights, Including Their Right to a Republican Form of Government.

As explained by at least one commentator, describing the fundamental principles that anchor republican governments:

> [i]f all men are by nature perfectly free and equal, there can then be no claim grounded in nature of one to rule another. . . . As a statement of right, then, the principle is a universal: all forms of government derive their legitimacy from the consent of the governed; all forms of government claiming legitimacy are subject to the master principle of popular sovereignty and hence are accountable to the governed for the faithful performance of their charge.[49]

The judicial "finding" of corporations in the Constitution constitutes a long train of usurpations of the people's inalienable rights, including the people's right to be free - as a majority - from governance by a corporate minority. That bestowal of "corporate rights" comes at a clear cost to people. As at least one commentator has

[49] Philip B. Kurland and Ralph Lerner, eds., THE FOUNDER'S CONSTITUTION, Vol. I 39-40 (1987).

noted, "the extension of corporation constitutional rights is a zero-sum game that diminishes the rights and powers of real individuals."[50]

Thus, Fourth Amendment rights conferred upon corporations deny people access to information and the ability to protect their health, welfare, and safety; the bestowal of First Amendment rights upon corporations denies people's access to information to frame questions, and participate in public debates and elections; the bestowal of equal protection rights upon corporations prevents people from treating corporations as subordinate entities. Cumulatively, the judicial conferral of rights inherently denies the people their ability to govern themselves.

The cases outlined below show that such assessments are not ivory tower academic theories, but frightening reality. It is clear that "finding" corporations within the Constitution has come only at the expense of nature, communities, democracy, and the health, safety, and welfare of people. It has also wrested the authority to govern from the majority, and vested it in a distinct corporate minority – thus violating the Constitutional guarantee of a republican form of government.

[50] Carl J. Mayer, *Personalizing the Impersonal: Corporations and the Bill of Rights*, 41 HASTINGS L.J. 577, 658-59 (March 1990).

A. Corporate Personhood and the Denial of People's Inalienable Rights

After people of the United States worked to eliminate slavery[51] and drove the adoption of the Fourteenth Amendment, the federal government passed civil rights legislation to empower African Americans to protect their Amendment rights from infringement by state governments.[52] Today, the Civil Rights Act of 1964 is a direct descendant of the original Civil Rights Acts of 1866 and 1871. Section 1983[53] of the 1964 legislation provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States ***or other person*** within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (emphasis added).

---

[51] The work of the people of these United States to eliminate the status of blacks as property, and to secure rights for blacks, was obstructed by the judiciary in the name of the Constitution. *See Dred Scott v. Sandford*, 19 How. 393, 15 L.Ed. 691 (1857) (striking down the Missouri Compromise because it deprived slave owners of their property without due process); *See also*, *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding a Louisiana segregation law against a constitutional challenge).

[52] The passage of the Fourteenth Amendment, however, did not end Southern - or Northern - discrimination against blacks. "For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by [the Supreme Court] did not prohibit the most ingenious and pervasive forms of discrimination against the Negro." *Regents of University of California v. Bakke*, 438 U.S. 265, 387 (1978) (Marshall, J., concurring). The Executive Branch was equally responsible for this denial of rights: "When his segregationalist policies were attacked, President Wilson responded that segregation was 'not humiliating but a benefit.'" *Id*. at 394.

[53] 42 U.S.C. §1983.

Because §1983 is an exercise of Congress' power to enforce §1 of the Fourteenth Amendment,[54] "persons" protected by §1983 are the same "persons" decreed by the Courts to be protected by the Fourteenth Amendment.[55] Along with establishing liability, §1988 of the statute allows the recovery of attorneys' fees and costs, to be awarded to the "person" who was the subject of the discrimination.

Thus, corporations, by virtue of their judicially conferred "personhood," wield the Civil Rights Act in unison with the Due Process and Equal Protection provisions

---

[54] *Harman v. Daniels*, 525 F. Supp. 798, 799-800 (W.D. Va. 1981) ("Legislative history indicates that Congress enacted [the Civil Rights Act] pursuant to the Fourteenth Amendment. . . and for the express purpose of 'enforc(ing) the Provisions of the Fourteenth Amendment'. . . The Fourteenth Amendment is the 'centerpiece" of the statute. . . and the umbrella of Section 1983 extends no further than its provisions"); *See Mitchum v. Foster*, 407 U.S. 225, 238 (1972) (declaring that Congress enacted the statute pursuant to the Fourteenth Amendment "for the express purpose of 'enforc(ing) the Provisions of the Fourteenth Amendment'"); *Monroe v. Pape*, 365 U.S. 167, 171 (1961); *See also, Poirier v. Hodges*, 445 F. Supp. 838, 842 (M.D. Fla. 1978). Section 1983 was thus a remedial act, adopted for the "the preservation of human liberty and human rights." *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 684 (1978) (recognizing that §1983 extended a "remedy to all people, including whites" and that the section was "so very simple and really reenact[ed] the Constitution"). *See also, Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 617-18 (1979) (declaring that §1983 "authorizes a cause of action based on the deprivation of civil rights guaranteed by other Acts of Congress"); *Maine v. Thiboutot*, 448 U.S. 1, 5 (1980) (explaining that "the §1983 remedy broadly encompasses violations of federal statutory, as well as constitutional law. . . [and that it] was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights"); *Dennis v. Higgins*, 498 U.S. 439 (1991) (stating that "as a remedial statute, [§1983] should be 'liberally and beneficently construed. . . against all forms of official violation of federally protected rights'").

[55] As a result, as early as 1873, corporations were wielding the precursor of §1983 against municipalities. *See Northwestern Fertilizing Co. v. Hyde Park*, 18 F.Cas. 393, 394 (No. 10,336) (CC ND Ill. 1873).

of the Fourteenth Amendment to overturn laws and punish elected officials with the payment of attorneys' fees incurred by the corporations. The story of how cell phone provider Omnipoint Communications Corporation forced its way into several communities over the past decade is illustrative of how corporations routinely use Fourteenth Amendment rights to deny the right of people and communities to protect their health and safety.

Omnipoint Corporation is engaged in the business of providing digital telephone service by constructing antennae for transmitting radio signals between cellular telephones and ordinary telephone lines. The radio signals are a low-intensity form of radiofrequency (RF) electromagnetic radiation.

There exists a large body of evidence that the radiation emissions from those lines are harmful.[56] A neuropsychiatrist testifying before a zoning and planning committee in 1991 explained:

---

[56] *See* Carol R. Goforth, *A Bad Call: Preemption of State and Local Authority to Regulate Wireless Communication Facilities on the Basis of Radiofrequency Emissions*, 44 N.Y.L. SCH. L. REV. 311 (2001) (listing a range of scientific and technical studies that have examined the health impacts caused by radiofrequency electromagnetic radiation); *See also*, V.B. Ogai et al., *Effect of Low Intensity of Electromagnetic Radiation in the Centimeter and Millimeter Range on Proliferative and Cytotoxic Activity of Murine Spleen Lymphocytes*, Biofizika, May-June, 2003 (48(3): 511-520); *Electromagnetic Radiation: WHO Studies Health Effects of Mobile Phones*, Cancer Weekly, June 17, 1996 (declaring that "there have been studies in Sweden and the United States. . . which indicated a link between health effects and electromagnetic fields").

> There has been a steady stream of reports of possible health risks associated with exposure to electromagnetic fields and MW/Rf (microwave/ radiofrequency) radiation from power substations, high voltage lines and microwave towers. Most frightening of these are the possible increases in the risk of cancer and childhood leukemia.
> . . . .
> In summary, we feel that cellular biology, animal and human studies show that MW/RF exposure presents a health risk at the power levels of the proposed antenna and even at the power levels of the existing antenna . . . . Increased numbers of cancers have been found in populations exposed to less radiation than we are receiving now . . . . Our review of the literature on MW/RF exposure has led us to the sobering conclusion that living in close proximity to a source such as the proposed NYNEX/Newton antenna on Waban Hill will increase the risk to ourselves and to our children of developing cancer.[57]

In 1998, the Corporation sought to construct a cellular telephone tower in Chadds Ford Township in eastern Pennsylvania. Because the municipality's zoning ordinance provided no place for cell towers, the Corporation filed a variance application to force its cell tower into the municipality.

Taking the community's concerns about health and safety seriously, the municipal government denied the Corporation's application on May 26, 1998. Municipal officials believed that their exercise of police power, to protect the community, was based on solid constitutional doctrine. Several Courts have held that such an exercise of police power is intimately linked to the preservation of people's inalienable rights. Supreme Court Justice Gray has likened such an exercise of the

[57] Dr. Sheldon Benjamin, Testimony before the Zoning & Planning Committee of Newton Board of Alderman, May 15, 1991 (http://www.emrnetwork.org/schools/md_caution.pdf).

municipality's police power to the preservation of the rights guaranteed by the Declaration of Independence and the Fourteenth Amendment:

> The police power includes all measures for the protection of the life, the health, the property and the welfare of the inhabitants, and for the promotion of good order and the public morals. It covers the suppression of nuisances, whether injurious to the public health, like unwholesome trades, or to the public morals, like gambling houses and lottery tickets.
>
> This power, being essential to the maintenance of the authority of local government, and to the safety and welfare of the people, is inalienable. As was said by Chief Justice Waite, referring to earlier decisions to the same effect, "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. (citations omitted).[58]

Courts have specifically recognized the role of a plenary police power to defend individual rights guaranteed under the Fourteenth Amendment and other constitutional provisions. Courts uniformly agree that the police power cannot be bargained away.[59]

---

[58] *Leisy v. Hardin*, 135 U.S. 100, 128 (1890) (Gray, J., dissenting).

[59] *See, e.g., Meyer v. State of Nebraska*, 262 U.S. 390 (1923); *Kovacs v. Cooper*, 336 U.S. 921 (1949) (declaring that the "police power of a state extends beyond health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community"); *Stone v. State of Mississippi*, 101 U.S. 1079 (1880) (declaring that "[a]ll agree that the Legislature cannot bargain away the police power of a State. 'Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the State; but no Legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police . . . . No one denies, however, that [the police power] extends to all matters affecting the public health or

The Omnipoint Corporation responded to the municipality's denial by suing Chadds Ford Township under the federal Telecommunications Act of 1996 (TCA) and § 1983 of the Civil Rights Act. Section 704 of the TCA - which cellular phone corporations influenced by wielding First Amendment rights[60] - included a provision

---

the public morals . . . .No Legislature can bargain away the public health or the public morals'"); *State v. Walmsley*, 162 So. 826, 836 (La. 1935) (declaring that

> "[n]either the Legislature nor the people themselves can bargain away the power to regulate the public health and morals, or legislative discretion concerning such regulation, and the power is inalienable even by express grant. It is elementary and fundamental that the state's police power cannot be bartered away by contract; and that the clauses of the Constitutions, guaranteeing due process of law and vested or contract rights against impairment, have always yielded to its proper exercise").

See also, Boston Beer Co. v. Masssachusetts, 97 U.S. 25 (1877); *Boyd v. Alabama*, 94 U.S. 645 (1876); *In re Jesus Loves You, Inc*., 40 B.R. 42, 45 (Bankr. M.D. Fla. 1984) (declaring it "a well settled principle that the legislature cannot bargain away the police power of the sovereign or its power to take appropriate measures to protect the health, safety, and morals of its citizens").

[60] *See* David Wolman and Heather Wax, *How Corporate Personhood Threatens Democracy*, UU World, May/June 2003 (explaining that "[t]he Washington Post estimates that telecommunications corporations donated $48 million to federal candidates and the state and national committees of the major parties while Congress was working on the bill and in the years after it took effect. An article by staff writer Mike Mills in December 1998 noted that '[d]uring one period, from October 25, 1995, to February 2, 1996, as House and Senate lawmakers were huddled in a conference committee to work out the final details. . . the industry sprinkled $2.7 million in contributions over lawmakers and parties – three times more than it gave during comparable periods in each of the two previous election cycles'").

Finding corporations in the First Amendment (and in the rest of the Constitution) has guaranteed corporate domination of lawmaking. *See* Dean Ritz, ed., DEFYING CORPORATIONS, DEFINING DEMOCRACY xiv (2001) (stating that "[c]orporations today act in the capacity of governments. Energy corporations determine our nation's energy policies. Automobile corporations determine our nation's transportation policies. Military manufacturing corporations determine our nation's defense policies. Corporate polluters and resource extraction corporations

that outlawed control by local government over the "placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions." The law thus compelled elected and appointed officials to trump the decisions of communities in favor of the private interests of telecommunications corporations.

Using that section of the Act, the Federal District Court for the Eastern District of Pennsylvania ruled that Chadds Ford Township had violated the law, and that the actions of the Township had deprived the Corporation of its civil rights under §1983. The Court then ordered the Township to pay the Corporation's attorneys' fees. *Omnipoint Communications Enterprises L.P. v. Zoning Hearing Board of Chadds Ford Township*, No. Civ. A. 98-3299, 1998 WL 764762 (E.D. Pa. Oct. 28, 1998).

After successfully forcing its cell tower into Chadds Ford Township by harnessing the federal Court, Omnipoint Corporation officials marched to the town of Wellfleet on Cape Cod Bay in Massachusetts. There, citizens had organized the Wellfleet Action Group to oppose installation of the Corporation's cell tower in the steeple of the First Congregational Church, which sat in the middle of town. Human health concerns motivated democratic opposition to the installation.[61] Wellfleet

---

define our environmental policies. Transnational corporations determine our trading policies").

[61] *See* Jim Boothroyd, *The Battle of Wellfleet*, Adbusters (Winter 2000).

residents elected citizen Margo KochRuthe specifically to vote against the installation, and the Town denied the Corporation's request to site the cell tower.[62]

The Corporation then used the *Chadds Ford Township* decision to threaten the Town with a lawsuit if the Planning Board did not reverse its decision. Citizens of Wellfleet responded by petitioning the Planning Board to amend its zoning laws to require 1,500 feet setbacks for cell towers, which would have forced the Corporation to locate its tower outside town.[63] After meeting with lawyers for the Town and the Corporation behind closed doors, the Planning Board reversed itself and declined to amend the zoning laws for the Town.

Town selectman Dale Donovan described the result of the Corporation's wielding of judicially granted constitutional rights:

> Our legal counsel said, "You're dead in the water on this one." How much of the people's money can we spend to defend something? Omnipoint's use of the civil rights threat definitely influenced us. Then you get into serious penalties. The term 'civil liberties' has broadened so dramatically. You're a corporation! You have property rights, but that's not what civil rights laws are for.[64]

Other citizens of Wellfleet were equally bitter in their assessment. Lynn Hiller, a member of the Wellfleet Action Group and former official of the National Institutes of Health, declared, "we learned that corporations like Omnipoint, engorged with

---

[62] *Id*.
[63] Carol K. Dumas, *Activist Electrifies Wellfleet Tower Opposition*, Cape Cod News (December 8, 1998).
[64] Wolman and Wax, *How Corporate Personhood Threatens Democracy*, UU World, May/June 2003.

constitutional rights granted by the Courts, now govern our communities. When the dust settled, we were no longer citizens of Wellfleet or of this nation. We were not persons under the law. Any remnants of democracy had been destroyed by the corporations and the courts."[65]

By reading the Constitution to mandate inclusion of corporations in the Fourteenth Amendment, the judiciary has subverted the clear meaning of that people-driven Amendment. Its use by corporations – like the Omnipoint Corporation – reveals that instead of being used to protect and secure individual rights, the Amendment is now wielded - under the authority and protection of the Courts - to deny the rights of people to protect their health, safety, and welfare. In the process, the use of the Amendment by the corporate minority automatically negates the federal guarantee of a republican form of government – a democratic form in which a minority is necessarily prevented from governing the majority.

Justice Black, in his dissent in *Adamson v. People of the State of California*, 332 U.S. 46 (1947), summarized the history of judicial activism surrounding the Fourteenth Amendment:

> It was aimed at restraining and checking the powers of wealth and privilege. It was to be a charter of liberty for human rights against property rights. The transformation has been rapid and complete. It operates today to protect the rights of property to the detriment of the rights of man. It has become the Magna Charta of accumulated and organized capital.

---

[65] Boothroyd, *The Battle of Wellfleet*, Adbusters (Winter 2000); *Phone Interview with Lynn Hiller*, September 15, 2003 (on file with Authors).

Id. at 85 (quoting Charles Wallace Collins, THE FOURTEENTH AMENDMENT AND THE STATES 137 (1912)).[66]

B. Corporate First Amendment Rights and the Denial of People's Inalienable Rights.

International Dairy Foods Association v. Amestoy, 92 F.3d 67 (2nd Cir. 1996) illustrates how corporations – after being "found" in the First Amendment by the courts – now wield those constitutional protections to prevent communities from protecting their health, safety, and welfare.

Amestoy involved Monsanto Corporation's Bovine Somatrotropin (rBST or rBGH), a synthetic growth hormone developed by the Corporation for injection into dairy cows. A substantial body of evidence exists that the use of rBGH in dairy cows causes harm both to the cows and the humans that drink the milk. Jack Kittredge in "Bovine Growth Hormone" says:

> A study by a scientist at the University of Illinois in Chicago in 1996 suggested that IGF-1 in the milk of rBGH-treated cows may well promote cancer of the breast and colon in humans who drink such milk.
> . . .
> A study of U.S. women reported on May 9, 1998, in the British journal *Lancet* found a sevenfold increased risk of breast cancer among premenopausal women younger than age 51 with high levels of IGF-1 in their blood. A study

[66] *See also,* R. Jeffrey Lustig, CORPORATE LIBERALISM: THE ORIGINS OF MODERN AMERICAN POLITICAL THEORY 95 (1982) (stating that corporate managers had gained "a private legal status restricted to one class of subjects and giving it significant powers over others. The product of the Civil War Amendments was a system of corporate privilege within an altered body politic").

reported in *Science* in January 1988 found a fourfold increase in risk of prostate cancer among men with the highest levels of IGF-1 in their blood.[67]

Many people fear that rBST causes human health problems, especially since there is no long-term experience with the synthetic hormone. Others want to avoid using synethetic food products. Still others know that rBST has caused health problems in cows,[68] and worry that small farmers suffer when rBST drives low milk prices even lower. Responding to some of those concerns - and acting within the constitutional constraints imposed by judicially conferred corporate "rights" - Vermont legislators passed a law in April 1994 requiring products made with rBST to be labeled.

Six nonprofit corporations, all created, funded, and directed by dairy, grocery, and food processing corporations, then sued the State of Vermont to use the courts to vindicate corporate First Amendments rights by striking down the labeling law. They alleged that the labeling law violated their corporate members' First Amendment rights to remain silent. Monsanto Corporation participated in the case as a friend of the court supporting the plaintiff trade associations.

---

[67] Jack Kittredge, *Bovine Growth Hormone*, Northeast Organic Farming Association of New York, 2003, http://www.nofany.org/hottopics/bovinegrowthhormone.html.
[68] *Id*. (explaining that "[b]ecause rBGH injections can cause numerous ill effects in cows, veterinarians in Germany have refused to administer it to cows on the grounds that it violates their professional code of ethics, which forbids intentional harm to animals").

On a motion for a preliminary injunction, judges in the Second Circuit Court of Appeals announced their intent to nullify the labeling law, ruling that the trade associations and the Monsanto Corporation were likely to succeed with their First Amendment claims:

> Although the Court is sympathetic to the Vermont consumers who wish to know which products may derive from rBST-treated herds, their desire is insufficient to permit the State of Vermont to compel the dairy manufacturers to speak against their will.
> ...
> Accordingly, we hold that consumer curiosity alone is not a strong enough state interest to sustain the compulsion of even accurate, factual information.

Amestoy at 76, 81.

The decision forced Vermont legislators to subordinate the rights of the democratic majority to the rights asserted by the agribusiness corporations by amending state law to make rBST labeling "voluntary." In a dissenting opinion delivered in the *Amestoy* case, Circuit Judge Leval described how the Second Circuit's decision trampled the basic rights of the majority:

> When the citizens of a state express concerns to the legislature and the state's lawmaking bodies then pass disclosure requirements in response to those expressed concerns, it seems clear (without need for a statutory declaration of purpose) that the state is acting to vindicate the concerns expressed by its citizens, and not merely to gratify their "curiosity." Vermont need not, furthermore, take the position that rBST is harmful to require its disclosure because of potential health risks. The mere fact that it does not know whether rBST poses hazards is sufficient reason to justify disclosure by reason of unknown potential for harm.
> ...
> The milk producers' invocation of the First Amendment for the purpose of

> concealing their use of rBST in milk production is entitled to scant recognition. They invoke the Amendment's protection to accomplish exactly what the Amendment opposes.

Amestoy at 76, 81.

In *First National Bank of Boston v. Bellotti*, the Supreme Court used the First Amendment to nullify a state law banning corporate spending on political referenda.[69] In that case, national banking associations and business corporations filed suit to overturn a Massachusetts law prohibiting them from "making contributions or expenditures to influence the outcome of a vote on any question submitted to voters." *Id*. at 765. The Supreme Judicial Court of Massachusetts declared that the fundamental issue raised by the challenge was whether the First Amendment protected corporations from a law barring their involvement in the referenda process.[70] Answering in the negative, the Massachusetts Court upheld the constitutionality of the statute.[71]

On appeal to the United States Supreme Court, Justice Powell, writing for the majority, rephrased the question framed by both the Massachusetts Court and the Massachusetts legislature, declaring:

> The court below framed the principal question in this case as whether and to what extent corporations have First Amendment rights. We believe that the

---

[69] *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

[70] The Massachusetts Supreme Court asked the precise question of "whether business corporations, such as the plaintiffs, have First Amendment rights coextensive with those of natural persons or associations of natural persons." 371 Mass. 773, 783, 359 N.E.2d 1262, 1269 (Mass. 1977).

[71] 371 Mass. 773, 795, 359 N.E.2d 1262, 1282 (Mass. 1977).

> court posed the wrong question. . . . The proper question therefore is not whether corporations "have" First Amendment rights, and if so, whether they are coextensive with those of natural persons. Instead, the question must be whether [the statute] abridges expression that the First Amendment was meant to protect. We hold that it does.

Id. at 776.

The Court then explained that "[i]f the speakers were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual." *Id*. at 777.

In *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), the U.S. Supreme Court nullified a New York regulation – adopted by the New York Public Service Commission during the energy shortages of the 1970's – that banned utility corporations from promoting the use of electricity. Holding that the ban unconstitutionally "suppressed speech," the Court declared that the "commercial" speech controlled by the law was protected by First Amendment constitutional guarantees.[72]

---

[72] *Central Hudson* at 579. *But see*, *Id*. at 589 (Rehnquist, J., dissenting) (declaring that striking down the regulation was akin to the Court's earlier role in striking down state minimum wage and worker protections under the doctrine of substantive due process, citing *Lochner v. New York*, 198 U.S. 45 (1905)); *See also*, *Id*. at 584 (Rehnquist, J., dissenting) (explaining that "[p]rior to this Court's recent decision in *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976), however, commercial speech was afforded no protection under the First Amendment whatsoever") (citations omitted).

Thus, in *Amestoy*, *Bellotti*, and *Central Hudson*, the Court's vindication of First Amendment constitutional guarantees for corporations resulted in a denial of the people's rights. In *Amestoy*, the people of Vermont were denied their inalienable right to life, safety, and health as a result of being prevented from learning the contents of their food. In *Bellotti*, the people of Massachusetts were denied the liberty of discussing and adopting referenda without the interference of corporate spending. In *Central Hudson*, the people of New York were prevented from taking key steps towards adopting a sustainable energy policy in the State.

These cases placed a corporate minority in dominant positions to control the laws that could be adopted by the majority of Vermont, New York, and Massachusetts residents. As such, the judicial enabling of corporations through the conferral of First Amendment rights negated the people's right to self-governance through a republican form of government, and created far-reaching adverse impacts on human, ecological, and economic health.

C. Corporate Privacy Rights and the Denial of People's Rights to Safety, Security, Health, and Welfare

As a result of the judiciary "finding" corporations in the Fourth Amendment, corporations are able to prevent people from implementing and enforcing laws that prevent worker deaths, diseases, and occupational injuries.

The work of the Occupational Safety and Health Administration (OSHA) is a case-in-point. According to the National Safety Council, at least 39,300 work fatalities and 8 million work related injuries are reported annually, with 240,000 of those injuries resulting in permanent disability. In addition, leaders in the field of occupational medicine calculate that between 40,000 and 70,000 deaths annually are attributed to occupational disease, and that an additional 350,000 non-fatal occupational illness cases are reported each year.[73]

Yet corporations have used judicially conferred privacy rights under the Fourth Amendment to prevent the Secretary of Labor from protecting workers. *Marshall v. Barlow's Inc*., 436 U.S. 307 (1978), involved § 8(a) of the federal Occupational Safety and Health Act of 1970, which directed the Secretary of Labor to inspect work areas for safety and health hazards. When an OSHA inspector attempted to search Barlow's Inc., an electrical and plumbing installation business in Pocatello, Idaho, in September 1975, the president of Barlow's refused to allow the inspection. The president maintained his opposition when the inspector returned three months later with a federal district court order requiring an inspection under the Act. The Corporation then turned to the courts seeking injunctive relief under the

[73] Jim Celenza, *'A Most Essential Aspect of Production' -- The Meaning of Workers' Memorial Day*, NEW SOLUTIONS: A JOURNAL OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH POLICY 60 (Spring, 1995). Celenza reports that the National Safety Council calculated in 1992 that the financial burden of workplace injury and illness was $115 billion a year. *Id*.

Fourth Amendment to nullify parts of the Act and prevent the inspections. *Id*. at 309-10.

The Supreme Court ruled that a corporation's Fourth Amendment rights make warrantless inspections unconstitutional. *Id*. at 315. Other courts have nullified enforcement actions against corporations based on similar assertions of "corporate rights."[74]

As in *Hale*[75], the judiciary's conferral of Fourth Amendment rights onto corporations also enables corporations to shield themselves from investigations pursued by the people's elected officials. In *Federal Trade Commission v. American Tobacco Co.*, 264 U.S. 298 (1924), the U.S. Senate directed the Federal Trade Commission to investigate several tobacco corporations for engaging in unfair competition practices through the manipulation of tobacco prices. To carry out the directive, the Commission ordered the American Tobacco Company and P. Lorillard Company to produce corporate books and papers. The corporations refused, claiming that Fourth Amendment protections shielded them from the authority of Congress. The Federal Trade Commission brought suit to compel production of the documents.

The U.S. Supreme Court agreed with the tobacco corporations, proclaiming that it was "contrary to the first principles of justice to allow" the search, and

---

[74] *See, e.g*., *City of Cincinnati v. Morris Investment Co.*, 451 N.E.2d 259 (Hamilton Cty. Ohio 1982) (suppressing evidence of building code violations due to warrantless nature of inspection of corporate-owned building).
[75] *Hale v. Henkel*, 201 U.S. 43 (1906).

declared that "we cannot attribute to Congress an intent to defy the Fourth Amendment or even to come so near to doing so as to raise a serious question of constitutional law." *Id*. at 307 (citations omitted).[76]

Thus, the judicial conferral of Fourth Amendment rights onto corporations denies the right of people to make inspections and conduct investigations to protect their health, safety, and welfare. In addition, by enabling corporations to nullify health and safety laws, the judiciary has severed the people's constitutional guarantee to a form of government that protects the majority from rule by a minority.

D. Corporate Fifth Amendment Takings and the Denial of People's Inalienable Rights

The judiciary's conferral of constitutional rights upon corporations threatens not only the lives and safety of people, but also the health of the land, air, water, and the natural systems that support them. Asserting rights under the Takings Clause of the Fifth Amendment, corporations routinely prevent elected officials from carrying out their obligations to protect human and natural communities.

A case in point is *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 95 F.3d 1422 (9th Cir. 1996), *aff'd*, 526 U.S. 687 (1999). There, a Corporation wanted

[76] *See also United States v. Armco Steel Corporation*, 252 F.Supp. 364 (S.D. CA 1966) (declaring in a Sherman Anti-Trust Act enforcement action that "'persons', within the constitutional provision prohibiting subjection of any person to double jeopardy for the same offense, includes 'corporations'").

to develop a residential complex on 37.6 ocean-front acres in Monterey, California. Public officials - responding to their constituents and to various laws protecting human and natural communities - rejected the corporation's application because the development would damage native flora and fauna and impact the habitat of the endangered Smith's Blue Butterfly. *Id*. at 1430-31.

The Corporation eventually sold the parcel of land to the state of California for $800,000 more than it paid for the property. It then turned around and sued the Town of Monterey for violating its "corporate rights" under the Takings, Equal Protection, and Due Process Clauses of the Fifth and Fourteenth Amendments of the Constitution. The court found in favor of the Corporation on the first two claims and awarded it damages of $1.45 million paid from the public treasury.

E. Corporations Wielding the Contracts and Commerce Clauses Interfere With the People's Inalienable Right to Life, Liberty, and a Republican Form of Government

As the Omnipoint Corporation did with the Fourteenth Amendment and the Civil Rights Act, corporations have used the courts to attack laws by wielding the authority of the Commerce and Contracts Clauses. When faced with such claims of "corporate rights," rural governments and communities are often forced to the brink of economic ruin by legal costs and fees.

In Centre County, Pennsylvania, for example, when a municipality passed a law requiring testing of sewage sludge for toxins and pathogens prior to disposal on

farms and mine reclamation sites, Synagro Inc. filed a nine-count complaint against the municipality in federal court. Among other allegations, the Corporation charged Rush Township with violating the corporation's constitutional rights under the Contracts and Commerce Clauses. The Township was forced to spend thousands of taxpayer dollars to dismiss the Contracts Clause count on pretrial motions, and the Commerce Clause allegation survived pretrial motions to be tried on the merits.[77]

Laws to protect farmers, farmland, and people who eat have recently become a focus of challenges by corporations seeking to eliminate family farmer competitors and other constraints on the "corporatization" of agriculture. According to the United States Department of Agriculture, four corporations now control over 60% of pork production and over 75% of beef production in these United States.[78] While corporations have been concentrating their ownership and control of livestock production, they have eliminated over 300,000 farmers in the last twenty years. Many believe that the transformation of farming in these United States was part of a structural readjustment envisioned by corporate managers and agricultural agency

[77] *Synagro-WWT, Inc. v. Rush Township*, 4:CV-00-1625 (M.D. Pa. June 7, 2002).
[78] USDA Advisory Committee on Agricultural Concentration, *Concentration in Agriculture*, (Washington, D.C., June, 1996). *See also* USDA National Commission on Small Farms, *A Time to Act* (January, 1998).

officials to concentrate corporate control over agriculture by removing family farm competitors.[79]

In 1975, the people of Iowa took action to protect family farmers and the communities dependent upon them. Iowan farmers, who had long lead the country in hog production,[80] were threatened by the plans of giant meatpacking corporations to integrate hog production and processing. To protect open and competitive markets for family farmers, Iowans passed a law making it illegal for a pork processing corporation to own and raise hogs in the state. The people of Iowa amended the law many times over the years to counter corporate efforts to evade the spirit of the law through creative financial arrangements. The legislature's votes on some amendments were unanimous.

Iowa's packer ban law stated that its purpose was "to preserve free and private enterprise, prevent monopoly, and protect consumers," *Smithfield Foods, Inc.*, No.

---

[79] In 1962, the Committee for Economic Development – composed of corporate executives from AT&T Co., Sears, Roebuck, and Co., General Motors Co., and American Can Company – released a report in which they stated their goals as "reducing the number of people in agriculture" and "reducing the number of people committed for their livelihood to farming." The Agriculture Subcommittee of the CED's Research and Policy Committee included corporate executives from A. Hormel and Co., Brenton Companies, Inc., Jewel Tea Co., and Simonds-Shields-Theis Grain Co. *See* Committee for Economic Development, *An Adaptive Program for Agriculture: A Statement on National Policy by the Research and Policy Committee of the Committee for Economic Development* (1962).

[80] In 2003, Iowa farmers were raising 26% of the nation's total inventory of 58.9 million hogs. *See Smithfield Foods, Inc. v. Miller*, No. 4:02-cv-90324, 2003 U.S. Dist. LEXIS 915 (S.D.Iowa, January 22, 2003).

4:02-cv-90324, p. 5n.3. Reflecting the fears of Iowa farmers, Iowa officials feared that "in controlling production, corporations like Smithfield can also control prices, both of the packaged meat and of live animals," causing "higher prices at the store and lower prices for Iowa producers who raise the animals."[81]

The public record reveals that Iowa's packer ban was an effort by a cross-section of Iowans to protect themselves from the economic and environmental harms posed by the vertical integration and horizontal concentration of hog production.[82] Farming organizations, including the Iowa Farm Bureau, Iowa Pork Producers, and the Iowa Farmers Union, joined community organizations such as Iowa Citizens for Community Improvement to support the ban.[83] As Gordon Allen, an assistant Iowa attorney general, explained, "the Iowa Legislature wanted to make sure livestock producers didn't face unfair competition from a packer that owned its own

[81] Leesa Kiewel, *Iowa Will Appeal Ruling on Packer Ban*, www.cattleplus.com/New%20Cattleplus/pages/news/agn/11.html.
[82] Open, competitive, and free markets through which individuals and families can secure a livelihood, are essential to protecting inalienable rights to life, liberty, and property. *See, e.g.*, Charles A. Reich, *Beyond the New Property: An Ecological View of Due Process*, 56 BROOKLYN L. REV. 731, 736 (1990); *Meyer v. State of Nebraska*, 262 U.S. 390, 399 (1923) (recognizing that the Fourteenth Amendment and other constitutional provisions guarantee the right "to engage in any of the common occupations of life. . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men").
[83] Iowa Farm Bureau Press Release, *Farm Bureau Opposes Challenge to Iowa Packer Ban* (November 8, 2002).

livestock."[84] Iowan U.S. Senator Tom Harkin reflected the belief of the majority "that livestock production in our state should be in the hands of independent producers."[85]

The packer ban, then, was a democratic exercise of the state's police power, which the Supreme Court described in *Thurlow v. Massachusetts*, 46 U.S. 504, 589-90 (1847), as an act of self-preservation:

> The acknowledged police power of a State. . .is a power essential to self-preservation, and exists, necessarily, in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity. He may resist that which does him harm, whether he be assailed by an assassin, or approached by poison. And it is the settled construction of every regulation of commerce, that, under the sanction of its general laws, no person can introduce into a community malignant diseases, or any thing which contaminates its morals, or endangers its safety. And this is an acknowledged principle applicable to all general regulations. Individuals in the enjoyment of their own rights must be careful not to injure the rights of others.
>
> From the explosive nature of gunpowder, a city may exclude it. Now this is an article of commerce, and is not known to carry infectious disease; yet, to guard against a contingent injury, a city may prohibit its introduction. These exceptions are always implied in commercial regulations, where the general government is admitted to have the exclusive power. They are not regulations of commerce, but acts of self-preservation. And although they affect commerce to some extent, yet such effect is the result of the exercise of an undoubted power in the State.

---

[84] Jerry Perkins, *Smithfield Challenges Iowa Ban in Federal Court*, Des Moines Register.com (December 17, 2002).
[85] Cheryl Rainford, *Iowa Court Blasts Iowa Packer Ownership*, Agriculture Online (January 23, 2003).

Responding to the actions of the majority in Iowa, Smithfield Foods Corporation[86] joined Murphy Farms LLC and Prestage-Stoecker Farms, Inc. to sue the State of Iowa in federal court to nullify the packer ban. The Corporations argued that the ban violated their rights under the Commerce Clause of the U.S. Constitution. The federal district court adopted Smithfield Corporation's Commerce Clause argument and nullified the law. *Smithfield Foods. Inc*., No. 4:02-cv-90324, p. 17.

Agribusiness corporations, wielding judicially conferred Commerce Clause rights, have also used the courts to strike down other efforts by communities to resist the corporatization of agriculture. On August 19, 2003, the federal 8th Circuit Court of Appeals nullified a state constitutional amendment adopted in 1998 by citizens of South Dakota that banned non-family owned agribusiness corporations from owning farmland or engaging in farming.[87] Agribusiness corporations, the American Farm

---

[86] Through integration of livestock ownership and meat processing, Virginia-based Smithfield Foods, Inc. now dominates hog production – owning 12 million hogs and processing 20 million hogs annually – calling itself "the world's largest pork processor and hog producer." *Smithfield Foods, Inc. v. Miller*, No. 4:02-cv-90324, 2003 U.S. Dist. LEXIS 915 (SD Iowa, Jan. 22, 2003), p. 3. At the time of the lawsuit, Smithfield Corporation and three other meatpacking corporations controlled 60% of the processing market, up from 34% in 1989.

[87] Similar laws have been adopted by nine Midwestern states – which produce over 30% of this nation's agricultural output. The laws were first adopted in Oklahoma in 1904, and have been upheld against due process and equal protection constitutional challenges in the United States Supreme Court. *See Asbury Hospital v. Cass County, N.D.*, 326 U.S. 207 (1945). In addition, ten municipal governments in Pennsylvania have adopted similar municipal laws, which have also been challenged by

Bureau Federation, and other agribusiness interests had sued to overturn the law, alleging that it violated the "dormant" Commerce Clause. After finding that the language of the law passed Commerce Clause scrutiny, the Court proceeded to nullify the law, contending that the intent of the circulators of the referenda to eliminate corporations from agriculture violated the Commerce Clause.[88]

The conferral of rights by the judiciary upon corporations through the Contracts and Commerce Clauses has thus enabled corporations to wield those rights to eliminate the people's ability to make laws to protect their health, safety, and welfare. In addition to denying those fundamental and inalienable rights, the bestowal of "corporate rights" enables corporations - as a minority - to dictate law to a majority, thus violating the people's right to a republican form of government.

---

agribusiness interests wielding the Fourteenth Amendment, Contracts, and Commerce Clauses. *See Leese v. Belfast Township Board of Supervisors*, No. 304 of 2001-C (Fulton County, Pennsylvania, Court of Common Pleas 2001).

[88] *South Dakota Farm Bureau, Inc., et al., v. Hazeltine, et al*., No. 02-2366 at 18-21 (8th Cir. August 19, 2003).

V. This Court Must Dismiss All Constitutional Claims Brought by [X] Corporation Against [Y] Government Because the Assertion and Validation of Those Rights Denies the People's Inalienable Rights, Including Their Right to a Republican Form of Government.

The small selection of examples explored in this Brief[89] confirm Supreme Court Justice Felix Frankfurter's conclusion that the history of constitutional law is "the history of the impact of the modern corporation upon the American scene."[90]

These examples also demonstrate that the judicial conferral of constitutional protections upon corporations - protections that are then used to deny people's rights - is utterly contrary to this nation's framework of governance. Corporations, as subordinate, public entities, lack any authority to suppress people's rights and inflict ongoing harms. It is equally clear that the judiciary lacks the authority to bestow constitutional rights upon them.

The judicial "finding" of corporate constitutional rights forces corporate rights into the lawmaking process itself, thereby inhibiting elected officials and chilling

[89] The few representative examples explored in this Brief do not fully explore how the judicial defining of corporations as "persons" enables corporations to use individual victories by people for their own ends. When natural persons seek to vindicate their own constitutional freedoms through the courts, corporations as "persons" seize those scattered victories and use them to expand corporate "rights." In that manner, people and communities are thus harnessed to the corporation – with new rights secured by people automatically applied to corporations.

[90] Felix Frankfurter, THE COMMERCE CLAUSE UNDER MARSHALL, TANEY, AND WAITE 63 (1937).

public debate. Thus, the judicial enablement of corporations enters federal, state, and municipal legislative Chambers.

Certainly, the courts do not lack the authority - nor the responsibility - to halt these usurpations, thus vindicating the people's right to a republican form of government. In *In Re Debs*, 158 U.S. 564, 582 (1895), the Supreme Court declared:

> The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation, and all its militia, are at the service of the nation, to compel obedience to its laws.

In this case, this Court must recognize that the corporation lacks the authority to assert constitutional claims against one of the people's duly established governments. This Court has the responsibility to do no less. Therefore, this Court should dismiss the constitutional claims asserted by [X] corporation. To do otherwise continues to validate and affirm legal principles utterly contrary to those upon which this nation was founded.

VI. Conclusion

For the reasons outlined in this Brief, amici urge this Court to dismiss the constitutional claims of [X] corporation.

Submitted this _____Day of _____, 2003.

By:

_____

Thomas Alan Linzey, Esq.
Daniel E. Brannen, Jr., *Of Counsel*
Community Environmental Legal Defense Fund, Inc.
2859 Scotland Road
Chambersburg, Pennsylvania 17201
Counsel for Amici Curiae Community Environmental Legal Defense Fund, Inc. and The Program On Corporations, Law, and Democracy

_____

Richard L. Grossman, *pro se*
Box 390
Milton Mills, New Hampshire 03852