

Corporate Rights in America: A Growth Industry

The conflict between corporations and government has existed since the birth of our nation. As early as 1791 James Madison expressed concern about the “spirit of speculation and fraud” evident across the land.ⁱ In 1816 Thomas Jefferson warned Americans “to beware of the political ambitions” of a newly minted financial system created by Alexander Hamilton.ⁱⁱ Thus, the 2010 Citizens United v FEC decision was not the start, but rather the latest and most radical step in the corporate march toward securing constitutionally protected rights.ⁱⁱⁱ

In 1832, President Andrew Jackson vetoed the re-chartering of the Second Bank of the United States, concerned that the imbalance in ownership between government (20%) and private investors (80%) would give the bank unfair advantage over local competition.^{iv} In 1907, Congress – at the urging of President Theodore Roosevelt – enacted statutes limiting and regulating corporate campaign expenditures and calling for transparency.^v

The century-old firewall between corporations and special interest money has been crumbling steadily over the past 30 years. It came tumbling down with the blow of the Citizens United decision. This didn’t happen by accident. Until fairly recently, the steady accretion of corporate rights were pursued on a piecemeal basis. That approach changed dramatically in the 1970’s when an organized, collective corporate approach to influence political outcomes began in earnest.

The passage of major environmental, civil rights and campaign finance reform in the late 1960’s and early 1970’s sounded alarm bells in the corporate world. The response of business to this wave of public-spirited political activity was to develop and fund a sustained and united effort as a countervailing political force. A memo written by Virginia corporate attorney and soon-to-be Supreme Court Justice Lewis Powell is credited by many as a primary catalyst for this paradigm shift in corporate strategy. Written in 1971 at the request of his client, the US Chamber of Commerce, Powell wrote a memo (known as the Powell Memo) advising the Chamber that corporations needed to organize to stop what he referred to as an “attack on the American free enterprise system”.^{vi}

The Powell memo further urged corporations to jointly fund a sustained and coordinated plan. Of equal or greater significance, Powell identified working through the judicial system and an “activist-minded Supreme Court” as essential to shaping “social, economic and political change” for corporate benefit.^{vii} Since that time, the US Chamber of Commerce has become an increasingly well-funded and powerful voice on behalf of corporate interests in Washington and on the campaign trail.

In 1972 Lewis Powell was appointed to the Supreme Court by Richard Nixon. Powell’s rulings reveal a clear corporate tilt. Justice William Rehnquist, a well-known conservative, was also a Nixon Supreme Court appointee. While some also describe Justice Powell as a conservative, Justice Rehnquist rendered dissents to many of Powell’s decisions. The difference in the judicial opinions of these two Supreme Court Justices reveals a clear contrast between “corporatist” versus “conservative” philosophies.^{viii}

During this period, corporations also began to organize in the private sphere, most notably by funding numerous non-profit legal foundations in the 1970’s to drive the demand for corporate rights.^{ix} For the past 30 to 40 years, these foundations, funded by wealthy corporatists (the “1%”), have persistently challenged the constitutionality of campaign finance legislation at all levels of government. Human characteristics such as “voice”, “corporate speech” and the “rights of corporate speakers” were consistently used in their briefs when referring to corporations, thus blurring the functional distinction between people and state-created business entities through usage and time.

Preparing model legislation for passage in receptive states to further ideological as well as corporate goals of a super-wealthy few was the focus of some of these groups.^{x xi} More detailed information about one of the most secretive of these groups can be found in the related hand out: *ALEC: Modeling Legislation for Corporate and Personal Wealth*.

Recently, the US Chamber of Commerce has begun stretching beyond its membership to build a non-member, grassroots effort to further its corporate agenda. With vast sums of money from secret donors, the Chamber is enlisting non-Chamber members to lobby on behalf of legislation and help in getting out the vote in elections.^{xii} The primary difference between today and the 1970s, when corporate resistance to the perceived threat of publicly-minded regulatory legislation and agencies began, is the boundless sums of money from undisclosed sources available to fund this effort.

As described in a 2009 LA Times article, wealthy donors and corporate leaders can now operate in the comfort of protected anonymity:

Using trade associations such as the Chamber as the vehicle for spending corporate money on politics has an extra appeal: These groups can take large contributions from companies and wealthy individuals in ways that will probably avoid public disclosure requirements. The Chamber has developed that into something of a specialty: Under a system pioneered by Donohue {Tom Donohue, Chamber President, 1997-present}, corporations have contributed money to the chamber, which then produced issue ads targeting individual candidates without revealing the names of the businesses underwriting the ads.^{xiii}

Without disclosure there can be no public scrutiny. “Sunlight is said to be the best of disinfectants,” as Supreme Court Justice Louis Brandeis so memorably wrote.^{xiv}

Money has bought influence since the start of our nation and will continue to be a factor in our politics and our representative form of government unless there is a major overhaul of campaign finance reform and guidelines for lobbying, at a minimum. The Citizens United decision has unleashed a torrent of cash into the system that deepens the crisis. Spending unlimited amounts of corporate money to help elect or defeat candidates and promote a legislative agenda is now a constitutionally protected free-speech right for the first time in our history.

Of course, these rights apply to everyone not just corporations and the wealthy. What concerns so many Americans is the gross imbalance between the vast amounts of money at the disposal of the wealthy elite as compared with the 99%.

In a world where money equals speech, the more money the louder the speech and the greater the chance that smaller voices will be completely drowned out. While the system is more entrenched and entangled than ever, citizens have faced and overcome similar hurdles before. Many believe that, once again, only the loud, clear collective voice of the people will tamp down the rise of special interest money percolating throughout our political system.

ⁱ http://www.familytales.org/dbDisplay.php?id=ltr_mad1691

ⁱⁱ JD Clements, *Corporations are Not People*, Berrett-Koehler Publishers, Inc., San Francisco, 2012., foreword by Bill Moyers, p. xii

ⁱⁱⁱ <http://www.law.cornell.edu/supct/html/08-205.ZX.html>

^{iv} Ibid, p. xiii: “This act seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government . . . It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes.”

^v <http://www.fec.gov/pages/brochures/fecfeca.shtml>

^{vi} IbidMemo, aka Powell Manifesto: Attack of American Free Enterprise System: <http://www.webcitation.org/64jAmJkKB>:

^{vii} Ibid

^{viii} *Corporations are Not People*, Berrett-Koehler Publishers, Inc., San Francisco, 2012, p. 74

^{ix} While these foundations are staffed by lawyers, they are fully funded by corporations and donors for one reason and for a specific purpose: using the judicial system to secure legally protected rights for their donors. Recent information about the activity of these foundations has raised serious questions about their ‘legality’. Some of these foundations generic names (e.g., American Legislative Exchange Council (ALEC), US Chamber of Commerce National Chamber Litigation Center, National Legal Center for the Public Interest, etc.) but many foundation names indicate the national breadth and scope of this effort: Pacific Legal Foundation, Mid-Atlantic Legal Foundation, Mid-America Legal Foundation, New England Legal Center, etc.

^x Information about one such group, The American Legislative Exchange Council (ALEC), became public through documents leaked to the press in 2011. While watch dog groups such as Common Cause were aware of the 40 year existence of ALEC as an organization, the inner workings and funding of the group were secret prior to this recent exposure.^x The similarity between Voter ID, abortion, right to work and immigration legislation that hit state Legislatures in a tidal wave after the 2010 elections is remarkable. Leaked documents from the American Legislative Exchange Council (ALEC) reveal this organization as the source of the legislation.

^{xi} Information about The American Legislative Exchange Council (ALEC) became public through documents leaked to the press in 2011. While watch dog groups (e.g., Common Cause, Center for Media and Democracy) were aware of the 40 year existence of ALEC as an organization, the inner workings and funding of the group were secret prior to this recent exposure.

^{xii} <http://articles.latimes.com/2010/mar/08/nation/la-na-chamber9-2010mar09>

^{xiii} Ibid

^{xiv} Louis Brandeis, 1912: <http://sunlightfoundation.com/blog/2009/05/26/brandeis-and-the-history-of-transparency/>