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The League of Women Voters of Concord and Carlisle Annual Breakfast

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Making Democracy Work: Free Speech for People

By Jeffrey D. Clements¹

I. Introduction

It is a great pleasure to join the League of Women Voters of Concord and Carlisle today, and I thank all of you for inviting me to address your annual meeting.

As you know, the mission of the League of Women Voters is to make democracy work for every American. Since its founding in 1920, six months before the ratification of the 19th Amendment to the Constitution and the overdue right of women to vote, the League has accomplished so much to fulfill that mission.

Six or seven decades ago, my grandmother - - Mildred Chapman Clements-- was an active League member in Chicago, the birthplace of the League of Women Voters. We should pause to consider how far we in America have come since our grandmothers and great grandmothers - - and our grandfathers and great-grandfathers, too- - began that work, against all odds, to break down voting barriers based on race, gender, and economic class. When we pause to consider that, we have every right to be very proud; proud of the League, and of America.

Today, you asked me to speak with you about campaign finance, money in politics, and, in particular, about the case of *Citizens United v. the Federal Elections Commission*, which the Supreme Court will decide very soon. In many ways, the *Citizens United* case, and the larger issue it reflects about the relative political power of people as compared to large, global corporations, reflects the challenge of our time to making our democracy work for everyone.

I will talk about the *Citizens United* case, and what it means for campaign finance laws and our elections. But I also want to go beyond campaign finance, and beyond the *Citizens United* case. In many ways, that case is only the most recent example of a modern, and erroneous, Supreme Court doctrine that has helped make many doubt whether we are a government of the people, for the people, and by the people, rather than a government of powerful, enriched corporations, for powerful enriched corporations.

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First, I'll offer some background on the *Citizens United* case, the Court's expected decision, and what I think it means.

Second, I'll offer some historical and legal context. I'll review how out of step this case and this new corporate rights doctrine is from our traditions in which the American people have always sought to contain and control the leveraging of corporate economic power into political power.

Third, I'll review how the *Citizens United* case is the extreme conclusion of a corporate push beginning in the 1970s to twist our First Amendment from a bedrock free speech right of people, citizens who are responsible for voting, debating, serving and making self-government work into a device to protect corporations from the people's laws.

At the end, I hope to leave you with a practical proposal to restore the First Amendment to people, instead of corporations, and to begin to make our democracy work for everyone again.

II. **First: Background on Citizens United and the Court's expected decision.**

The *Citizens United* case involves a corporate challenge to the most recent effort to control the corrupting and unfair influence of corporate money in politics: the Bipartisan Campaign Reform Act passed in 2002, frequently called the McCain-Feingold law after its Republican and Democratic Senate sponsors. This law prohibits corporations from using corporate funds to advocate voting for or against a candidate for the presidency or for Congress within certain time periods before an election. The law is riddled with exceptions and holes, including the use of PACs, so-called "independent expenditures," and other bypasses. But even that relatively weak restriction on corporate political expenditures is under fire.

Citizens United is non-profit corporation organized under Virginia law. The corporation financed and produced a video, "Hillary: The Movie," a hard-hitting infomercial that essentially portrayed then-presidential candidate Hillary Clinton as unfit for office and corrupt. Citizens United planned to distribute the movie in an effort to defeat Hillary Clinton's presidential race.

Now, there's nothing wrong with someone, or a group of people, who want to say tough, critical and even outrageous things about a powerful politician and urge people not to vote for that candidate. Indeed, that's what free speech is all about.

The problem is that we're not talking about a group of people. We're talking about a corporation using corporate funding to advocate voting against Hillary Clinton. The Citizens United video triggered the McCain-Feingold restriction because it used corporate funds to advocate voting against Clinton within 30 days of the primary elections.

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Rather than comply with the law, Citizens United sued the Federal Election Commission (FEC), seeking to stop the FEC from enforcing the law. Citizens United argued that the corporate spending restriction and the related disclosure and disclaimer sections violated constitutional rights to free speech under the First Amendment.

The federal District Court rejected Citizens United's challenge, and the case made its way to the Supreme Court.

The Supreme Court indicated last June and in oral argument in the case that it may use the Citizens United case to overrule previous cases where the Court had decided that Congress and the State legislatures may limit corporate money in politics.

In these previous cases, the Supreme Court correctly ruled that Congress and the States may regulate corporate political expenditures not because of the type of speech or political goals sought by the corporation but because of the very nature of the corporate entity itself.

What is that entity? Corporations simply don't exist unless we the people enact laws that enable people to organize a corporation and provide the rules of the road for using a corporation. We all can start and run businesses without government involvement or permission; we can form non-profits and associations and unions and political parties and all kinds of groups without the government. But we simply cannot form or operate a corporation unless the state enacts a law providing authority to form a corporation, and providing the rules of the road that go with use of the corporate form. That is a simple fact. Advantages of corporations are a privilege provided by government. We the people do that through our legislatures because we think, accurately I believe, that such advantages are economically to the advantage of all of us and society over the long haul.

Yet corporations, particularly powerful global corporations, - - and too many judges - - confuse these privileges and policies with Constitutional rights.

The Supreme Court used to resist this confusion. As the Court said in *Austin v. Michigan*, one of the cases threatened by the decision in *Citizens United*:

State law grants corporations special advantages – such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets . . . These state-created advantages not only allow corporations to play a dominant role in the Nation's economy, but also permit them to use 'resources amassed in the economic marketplace' to obtain 'an unfair advantage in the political marketplace.'²

² *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 658- 59 (1990) (quoting *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 257 (1986)).

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Similarly, in the other previous case, *McConnell v. FEC*, the Court pointed to “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”³

Now, in *Citizens United*, the Court threatens to sweep aside that analysis and these prior decisions of the Court as if they were a heresy that had no Constitutional foundation. Such a result would be extraordinary.

The notion that First Amendment free speech rights protect corporate use of corporate money to influence elections is wrong in many ways. It equates all money with speech. It makes a basic legal error of equating corporations with other associations of people. And most significantly, such a conclusion considers corporations, as opposed to people, as being capable of speech; of being capable of the moral, let alone physical, capacity to speak and debate about the issues and candidates that our democracy must grapple with.

Beyond legal doctrine, though, why does this case matter, and what is the likely impact?

Let me give you some statistics and you can draw your own conclusions about the consequences if the American people do not - - or, according to the Court, cannot - - control corporate money in politics:

- According to the 2009 Statistical Abstract of the United States, Post-tax corporate profits in the 2005 were almost \$1 **trillion**.
- During the 2008 election cycle, Fortune 100 companies- the 100 largest corporations- - alone had combined revenues of \$13.1 **trillion** and **profits of \$605 billion**.
- In contrast, during the same 2008 cycle, all political parties combined spent \$1.5 billion and all of the federal PACs or political action committees, spent \$1.2 billion.

Now let’s do the math:

If we take only the profit of the 100 largest corporations alone, those corporations would need **less than 1 percent of their \$605 billion in profit** to make political expenditures that would **double** all current political spending by all of the parties and all of the federal PACs.

Another way to look at it: Assume the 100 largest corporations wished to double - - and therefore, swamp - - President Obama’s record \$745 million fundraising effort in 2008? That would require shaving a little more than the slightest fraction- - 1/100 - - off the top of corporate profits from those 100 corporations.

³ *McConnell*, at 205 (citations omitted).

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Some think corporations won't use these resources, even if they could. I'd suggest that those who think that have not been paying attention to the current state of our democracy, even before the Court took the *Citizens United* case.

Corporations already spend vast sums of corporate money to dominate political debate and outcomes.

Let me give just a few examples:

The national Chamber of Commerce — the lobbying federation for the biggest corporations in America-- ranks first in spending for lobbying in the past decade, spending literally hundreds of millions of dollars to determine what happens, and more often, what does not happen in Washington.⁴

Each year, the Chamber of Commerce spends hundreds of millions of dollars on lobbying and related political activity.⁵

And this past Sunday, the New York Times (January 10, 2010) reported that the Chamber of Commerce, which it called “the goliath of the lobbying world,” promises to spend even more on the 2010 mid-term elections than it has previously.

In second place, is the General Electric corporation, which spent \$161 million on lobbying in the past decade.⁶

Pharmaceutical manufacturers gave more than \$92 million to federal campaigns from 1989 to 2006.

The financial services industry contributed \$460 million to congressional and presidential candidates in 2008.

And so on . . .

So what is the result of the corporate money onslaught in politics in recent decades, even before the Court lifted all restraints?

⁴ Center for Responsive Politics/OpenSecrets.org. According to the Chamber of Commerce website, the current president of the Chamber of Commerce “has built the Chamber into a \$200 million a year lobbying and political powerhouse with expanded influence across the globe.”

(<http://www.uschamber.com/about/board/donohue.htm>). According to the Los Angeles Times, this same head of the Chamber of Commerce describes the lobbying organization as “so strong that when it bites you in the butt, you bleed.”

⁵ Center for Responsive Politics/OpenSecrets.org

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Americans feel deeply estranged from their government. According to the Pew Research Center, barely a third (34%) agree with the statement, "most elected officials care what people like me think," a 10-point drop since 2002.⁷

Why is this? No matter your main issue or concern, whether you are Democratic, Republican, Libertarian, Green or Independent, you have seen that our government cannot seem to move on what a majority of the American people desire. More and more Americans are connecting the power of corporations to dominate Washington and the role of corporate and other big money in politics to the powerlessness of the people and the increasing dysfunction of our government.

A couple of examples...

Health care.

A New York Times/CBS News poll last summer showed that 72% of Americans want a government health care option to compete with private insurers. Even a majority of Republicans want this. 57% of Americans said they would pay higher taxes if necessary so that "all Americans could have health insurance that they wouldn't lose, no matter what." But we can't get it.

I talked about the Chamber of Commerce before. Last evening, the National Journal reported that the Chamber of Commerce acted with the largest health insurance corporations to secretly funnel up to \$20 million in corporate money from the insurance companies to the Chamber's anti-health care reform spending (already estimated at up to \$100 million). The money was used between September and December to run endless advertising, marketing and lobbying efforts to stop health care reform and convince Americans that reform was a disaster and the public option was worse.⁸

Did it work? It worked in Washington, where the Senate killed the public option. But look at this January 2010 CBS News poll; even after months of an onslaught of corporate money and lobbyists, most Americans don't think the health care reform effort in Washington goes too far; they support it or think that it does not go far enough.

Here are the numbers: On the question of covering all Americans, 57% think that the current bill goes "not far enough" or is "about right." On controlling costs, 60% think that the effort goes "not far enough" or is "about right." And on the question of regulating health insurance companies, 63% of Americans think the current bill does not go "far enough" or is "about right."

⁷ Pew Research Center for the People and the Press

<http://people-press.org/report/312/trends-in-political-values-and-core-attitudes-1987-2007>

⁸ <http://undertheinfluence.nationaljournal.com/2010/01/health-insurers-funded-chamber.php>

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While the American people weren't buying the corporate spin on healthcare, the corporate money succeeded in limiting the range of solutions in Washington and blocked reform that most Americans think is overdue.

The environment crisis.

We see a similar disconnect on environmental issues. The corporate-funded noise would tell you that Americans are against environmental regulation and oppose drastic change to get a handle on the environmental crisis. That's not so and most people know it. They just can't do anything about it.

Since 1996, Gallup has polled the following question every couple of years.

“All in all, which of the following best describes how you feel about the environmental problems facing the earth:

(1) life on earth will continue without major environmental disruptions only if we take additional, immediate, drastic action concerning the environment; or (2) we should take some additional action actions concerning the environment; or (3) we should just take the same actions we have been taking on the environment.”

From 1996 to 2008, when the poll was last done, through every variety of political environment, from good economies to bad, from 9/11 terrorism to war, the American people have been more or less consistent in the response, for a decade:

More than twice as many Americans give answer number 1 (we need “additional, immediate and drastic action”) as compared to those who give answer number 3 (the status quo answer). The percentage of respondents who believe we need “drastic, immediate action” has moved from 35% in 1995 to 38% in 2007 and 34% in 2008. When you add those who pick number 2 (we need to take “some additional action” concerning the environment) and the range of Americans, according to Gallup polls, who want better, stronger, tougher environmental protection goes to between 80% and 90% over the past ten years.

Those who chose answer number 3, the *status quo*, have ranged from 13-20%.

What have we gotten from our politics in that time when most of us have known of the gathering and urgent environmental crisis? More or less the *status quo*, and usually less as the global environmental crisis has narrowed the opportunities to address the problem.

We could look at virtually every issue, from global warming to military spending, from health care to financial services reform, from deficits and debt to public lands, and we will find what most people believe is necessary to do is ignored in Washington, where various corporate interests do battle over a narrow range of “acceptable” steps with their millions and millions of dollars. Most Americans simply cannot compete, and have been sidelined. Is there any wonder why the electorate is seen as increasingly angry?

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That's where we are now, before *Citizens United* is decided. And that is nothing compared to what will follow the Court's ruling that we can no longer regulate corporate money in politics as we have tried to do for more than a century.

Now, it's one thing if the Court's handcuffing of our ability to regulate corporate political money was an unfortunate but necessary price of liberty, or rooted in long-held Constitutional principles of free speech. We put up with views we find obnoxious and even repellent. We put up with rivers of crude and offensive expression in all media, and we tolerate every variety of dissent and opinion. That is a price we pay for freedom of speech.

But the notion of corporate First Amendment rights is not about freedom of speech, or even about any kind of speech or expression. It's about a kind of economic entity that we ourselves created and permit by legislation because we chose to do so for economic policy reasons.

To appreciate how radical the corporate rights claim in *Citizens United* is, it helps to remember our history.

III. Second. *Citizens United* and the Supreme Court's view of corporate "free speech" is wildly out of step with our American tradition and Constitutional principle: The American people with various levels of success, have always sought to contain the power of corporations.

The growing view among many people that we must restrain and control corporate power is not new in America and it is far from fringe. Throughout American history, at least until very recent times, that was the mainstream view.

The American people have sought to keep corporate money out of elections virtually since the beginning of the Republic, and the root of the law now challenged in *Citizens United* goes back to the 1907 Tillman Act, which banned corporate political contributions in federal campaigns.

For many years after the founding of our nation, state legislatures enacted corporate laws that allowed corporations, but only permitted these to be chartered for specific *public* purposes, and often limited the time period in which the corporate entity could operate.⁹ Restrictions on corporate purposes were the norm, and distrust and concern about the ability of corporations to grasp political power prevailed.¹⁰

⁹ HANDLIN & HANDLIN, *supra* note 15, at 106-33; *Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 548-60 (1933) (Brandeis, J., dissenting). Justice Brandeis's dissenting opinion comprehensively documents the development of the corporation in America. See *Liggett*, 288 U.S. at 548-67.

¹⁰ *Liggett*, 288 U.S. at 549; *Head & Amory v. Providence Ins. Co.*, 6 U.S. 127, 166-67 (1804) ("corporation can only act in the manner prescribed by law").

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James Madison, often considered the primary author of our Constitution, viewed corporations as “a necessary evil” subject to “proper limitations and guards.”¹¹ Thomas Jefferson hoped to “crush in its birth the aristocracy of our moneyed corporations, which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country.”¹²

These views prevailed among Americans through the decades. Until recently, it was presidents and our leaders as much as those outside of politics who were vigilant about corporate power.

President Andrew Jackson warned of the partisan activity of the second Bank of the United States corporation: “[T]he question is distinctly presented whether the people of the United States are to govern through representatives chosen by their unbiased suffrages or whether the money and power of a great corporation are to be secretly exerted to influence their judgment and control their decisions.”¹³ President Martin Van Buren, hardly a firebrand, warned of “the already overgrown influence of corporate authorities.”¹⁴

Later, President Grover Cleveland in his 1888 message to Congress said that “Corporations, which should be the carefully restrained creatures of the law and the servants of the people, are fast becoming the people’s masters.”¹⁵ Theodore Roosevelt successfully called on Congress to enact federal restrictions on corporate political contributions, stating: “Let individuals contribute as they desire; but let us prohibit . . . all corporations from making contributions for any political purpose, directly or indirectly.”¹⁶

Usually, the Supreme Court, with significant exceptions and deviations from time to time, respected this American consensus. Then how did we get to the point where the Court is on the precipice of striking down restrictions on corporate political spending and overruling its own previous cases to the contrary. That story is what I’ll turn to next.

¹¹ WRITINGS OF JAMES MADISON, VOL. 9 (Gaillard Hunt ed., G.P. Putnam’s Sons, 1900), To J.K Paulding, <http://oll.libertyfund.org/title/1940/119324> (last visited July 22, 2009).

¹² University of Virginia, Favorite Jefferson Quotes, Thomas Jefferson Digital Archive, To George Logan, <http://etext.virginia.edu/jefferson/quotations/jeff5.htm> (last visited July 22 2009).

¹³ Andrew Jackson, 1833 Annual Message to Cong. (Dec. 3, 1833) (transcript available at the University of Virginia, Miller Center of Public Affairs, <http://millercenter.org/scripps/archive/speeches/detail/3640>).

¹⁴ Martin Van Buren, 1837 Annual Message to Cong. (Dec. 5, 1837) (transcript available at the University of Virginia, Miller Center of Public Affairs, <http://millercenter.org/scripps/archive/speeches/detail/3589>).

¹⁵ Grover Cleveland, 1888 Annual Message to Cong. (Dec. 3, 1888) (transcript available at the University of Virginia, Miller Center of Public Affairs, <http://millercenter.org/scripps/archive/speeches/detail/3758>).

¹⁶ Theodore Roosevelt, 1906 Annual Message to Cong. (Dec. 3, 1906) (transcript available at the University of Virginia, Miller Center of Public Affairs, <http://millercenter.org/scripps/archive/speeches/detail/3778>).

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IV. Third: Background and consequences of the new corporate rights movement that has twisted the First Amendment so that the speech and wishes and political choices of people matter less than ever before, while the power and influence of corporate money is at its peak.

Judicial respect for the people's choices about corporate regulation began to erode in the late 1970s and 1980s. The path to the *Citizens United* case follows from the fabrication beginning in those years of a corporate rights/commercial speech doctrine under the First Amendment. This new doctrine reached its zenith in *Citizens United*, but its damaging effects on democracy have already gone far beyond campaign finance laws.

For 200 years, there was no such thing a corporate speech rights under the First Amendment. And the First Amendment did not prevent legislatures from enacting restrictions on corporate expenditures to influence elections.

During the Nixon Administration, however, in reaction to increasing legislative efforts to improve environmental, consumer, civil rights and public health laws, corporate executives began aggressively to push back for the creation of corporate rights. They followed a playbook spelled out in a memo from Lewis Powell, then a private attorney advising the Chamber of Commerce.¹⁷ President Nixon then appointed Lewis Powell to the Supreme Court.

Over the following years, a divided Supreme Court transformed the First Amendment into a powerful tool for corporations seeking to evade democratic control and sidestep sound public welfare measures.

In 1976 the Court struck down a Virginia law that restricted pharmaceutical advertising. Two years later, several large corporations—including Gillette and Bank of Boston--successfully challenged a Massachusetts prohibition on corporate expenditures to influence ballot questions.¹⁸ In an opinion authored by the former Chamber of Commerce lawyer, the now-Justice Powell, a 5-4 decision agreed with the corporate First Amendment claim, and cast aside the people's wish to keep corporate money out of Massachusetts citizens referenda.

With increasing aggressiveness, the judiciary has since used this new corporate-rights doctrine to strike down state and federal laws regulating corporate conduct. Even a partial list of decisions striking down public laws shows the range of regulations falling to the new corporate rights doctrine, from those concerning clean and fair elections; to environmental protection and energy; to tobacco, alcohol, pharmaceuticals, and health care; to consumer protection, lottery, and gambling; to race relations, and much more.¹⁹

¹⁷ The background of the 1971 Lewis Powell memorandum and the text of the memorandum itself are available at http://www.reclaimdemocracy.org/corporate_accountability/powell_memo_lewis.html.

¹⁸ *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

¹⁹ *See Bellotti*, 435 U.S. 765; *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (as applied to issue advocacy advertisements of non-profit corporation, BCRA held to violate First Amendment); *Thompson v. Western States Med. Ctr.*, 535 U.S. 357 (2002) (federal restriction on advertising of compounded drugs invalidated); *Lorillard v. Reilly*, 533 U.S. 525 (2001) (Massachusetts regulations of

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I can give you numerous examples but one is particularly telling. In the 1990s, Monsanto used recombinant DNA to develop a bovine growth hormone product that resulted in significant increases in milk from cows treated with the Monsanto drug. Citing serious questions of human health (including cancer risk), animal health, not to mention the viability of local agriculture, much of the world, including most of Europe, Australia, New Zealand, and Canada, banned the use of recombinant bovine growth hormone. The United States did not.

Vermont, home to many of New England's surviving local dairies and a leader in organic and local agriculture, did not go so far as to ban it but merely enacted a law requiring that milk products derived from cows treated with the Monsanto drug be labeled to disclose that information. That way, people could decide for themselves.

The law was challenged by the industrial dairy groups, and was struck down as a violation of the First Amendment. This result twisted First Amendment protections of conscience that prevent the government from compelling people to say what they don't

tobacco advertising targeting children invalidated); *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173 (1999) (federal restriction on advertising of gambling and casinos held unconstitutional); *44 LiquorMart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (Rhode Island law restricting alcohol price advertising invalidated); *Robert E. Rubin, Secretary of the Treasury v. Coors Brewing Co.*, 514 U.S. 476 (1995) (federal restriction on advertising alcohol level in beer invalidated); *City of Cincinnati v. Discovery Network Inc.*, 507 U.S. 410 (1993) (municipal application of handbill restriction to ban news racks for advertising circulars on public property held unconstitutional); *Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1 (1986) (invalidating California rule that utility corporation must make bill envelopes, which are property of ratepayers, available for other points of view besides that of the corporation); *Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980) (New York rule restricting advertising that promotes energy consumption invalidated); *Bellsouth Telecomm., Inc. v. Farris*, 542 F.3d 499 (6th Cir. 2008) (Kentucky may not prohibit corporation from stating on the customer bill that a fee that is to be assessed from the corporation and not passed on to consumers was a "tax" suggesting inaccurately that consumers paid in their bill); *Allstate Ins. Co. v. Abbott*, 495 F.3d 151 (5th Cir. 2007) (Texas law regulating advertising of auto body shops tied to auto insurers invalidated); *This That & the Other Gift & Tobacco, Inc. v. Cobb County, Georgia*, 439 F.3d 1275 (11th Cir. 2006) (Georgia ban on advertisements of sexual devices invalidated); *Passions Video, Inc. v. Nixon*, 458 F.3d 887 (8th Cir. 2006) (Missouri statute restricting advertisements of sexually explicit businesses invalidated); *Bad Frog Brewery v. N.Y. State Liquor Auth.*, 134 F.3d 87, 91 & n.1 (2d Cir. 1998) (New York regulation barring beer bottle label with gesture described by the Court as "acknowledged by Bad Frog to convey, among other things, the message 'fuck you'" held unconstitutional); *Int'l Dairy Foods Assoc. v. Amestoy*, 92 F.3d 67 (2d Cir. 1996) (Vermont law requiring disclosure on label of dairy products containing milk from cows treated with bovine growth hormones invalidated); *New York State Ass'n of Realtors, Inc. v. Shaffer*, 27 F.3d 834 (2d Cir. 1994) (invalidating New York law authorizing the Secretary of State to declare "non solicitation" zones for real estate brokers); *Sambo's Rest., Inc. v. City of Ann Arbor*, 663 F.2d 686 (6th Cir. 1981) (First Amendment allows corporation to break agreement with City and use name found to be deeply offensive and carry prejudicial meaning to African Americans); *John Donnelly & Sons v. Campbell*, 639 F.2d 6 (1st Cir. 1980) (invalidating Maine law restricting billboard pollution, even though law allowed (and paid for) commercial signs put up by state of uniform size at exits and visitors centers); *Washington Legal Found. v. Friedman*, 13 F. Supp. 2d 51 (D.D.C. 1998) (invalidating federal law regulating drug manufacturers' use of journal reprints and drug corporation-sponsored educational seminars to promote off-label uses for prescription drugs); *Equifax Services Inc. v. Cohen*, 420 A. 2d 189 (Me. 1980) (invalidating portions of Maine credit reporting statute as First Amendment violation). Many more such cases may be found in the state and federal reports.

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believe into something to prevent people from knowing what corporate managers don't wish to disclose. Corporations, of course, don't have consciences and indeed, unlike people, don't exist in the absence of government action. Yet similar theories about the First Amendment have been used to shield tobacco companies, pharmaceutical companies and many more.

The result of all of this new First Amendment theory? More than ever before, corporate money in politics corrupts and distorts our political and legislative process, and shouts down the voice and speech and wishes of the American people. And even when the rare legislative victory occurs, armies of corporate lawyers go into battle to take the matter to a Supreme Court that has forgotten its place in the American experiment in self-government, and all too often, accedes to the corporate claims of immunity from regulation or control by the people.

So what can we do?

V. The road back to restoring the First Amendment as a key pillar of democracy rather than as a corporate barrier to democracy.

The *Citizens United* case reminds us that as with those previous generations, we find that the democracy that we carry as an ideal cannot be fixed without first correcting a Supreme Court majority that has lost its way.

I am encouraged that so many people see this and are beginning to build efforts even in advance of the Court's ruling to respond. There are several worthwhile initiatives - - public funding of elections, shareholder and governance reform, among others - - to support. But in my view, the current challenge, as with so many previous challenges to democratic self-government, requires a campaign to amend the Constitution to make democracy work for everyone.

It is time to support and work for a 28th Constitutional Amendment to correct the Court, restore the First Amendment to the people's right, and remove unwarranted judicial controls on our lawmakers' oversight of corporate power. I'm working with Voter Action and citizens and business groups such as Public Citizen, the Center for Corporate Policy, and the American Independent Business Alliance to build a campaign to amend the Constitution to restore the First Amendment and free speech for people, not corporations.

Your first reaction might be skepticism about the long odds or long-term nature of the effort. But bear in mind two things. First, America, and democracy, is a long-term project. The corporate rights movement took 30 years to reach the point of *Citizens United*, and if it will take 30 years to fix that, that's all the more reason to get started now. Second, I don't think it will take 30 years. I believe in the Supreme Court's ability to find its way back, and in the ability of the American people to help it do so. Despite the challenges, change is happening now, and Americans are ready now to do what we've

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always done: insist, demand, and achieve a democracy that works for all people.

Americans have amended the Constitution repeatedly since the Civil War to expand rather than dilute democratic participation of people in elections. Most of the seventeen amendments that followed the ten amendments of our Bill of Rights were adopted to expand democracy and eliminate barriers to democracy for everyone. One amendment even overruled the Supreme Court when the Court sided with economic power and held that Congress had no power to enact a graduated income tax. The people responded with an amendment making clear Congress did indeed have that power.

If you think it is challenging to adopt an amendment to make clear the simple proposition that the First Amendment does not bar the people's oversight of corporations, imagine the challenge to those who began the "we want an income tax now" campaign!

Since 1920, the League has been in the vanguard of these efforts to make democracy and self-government real. We can do that again and end the misuse of the First Amendment by corporations to evade and invalidate reforms and public welfare measures by using the amendment process spelled out in the Constitution. This has been used by virtually every generation of Americans that have come before us. If you agree that corporate power and money is now one of the primary obstacles to effective self-government and reform, how can we do less than our grandmothers and grandfathers did when faced with similar challenges?

One of the surprises in reading the cases creating these corporate rights under the First Amendment is that it was the conservative Justice William Rehnquist who offered the most eloquent resistance and dissent when this doctrine began in the late 1970s and 1980s. I would like to end with his words in dissent in the *Bellotti* case - - the case that struck down our law keeping corporate money out of citizens referenda.

Disagreeing with the majority, Justice Rehnquist closed his dissent by saying "[I] regret now to see the Court reaping the seeds that it there sowed [referring to the early corporate speech cases]. For in a democracy, the economic is subordinate to the political, a lesson that our ancestors learned long ago, and that our descendants will undoubtedly have to relearn many years hence."

Let's relearn and get to work.