

How Do Court-Given Corporate Constitutional Rights

Harm We the People?

It seems that many people understand why the Move to Amend movement objects to the legal doctrine formulated in the 1976 Supreme Court decision, *Buckley v. Valeo*, that money spent in politics is the same as speech and therefore protected by the constitution. That clearly indicates that the wealthy have much more speech in such a system, e.g., they can control the microphone and drown out the speech of everyday people.

However, the reasons why the movement advocates for reversing the legal fiction that corporations are persons with constitutional rights are a little more difficult to articulate in brief form. Of course, it is obvious to most people that there is much overlap between the ultra-wealthy elite and those who control, and profit most from, the mega-corporations. Both groupings currently exert far more power in the United States than is healthy for a true representative democracy.

This brief document is an attempt to explain the fundamental evidence underlying the conclusion that the United States has become deeply compromised by *Supreme Court-given* constitutional rights for corporations created under statutes, such as business corporations, nonprofits, unions, and associations.

Corporations in the Post-Colonial Infancy of the Nation

There is no mention of corporations in the Constitution or its amendments. Arguments that the framers of the 14th Amendment intended it to cover corporate entities have been *unequivocally* debunked.¹

Post-colonial corporate charters were granted by state legislatures. The following table shows the differences between corporate charters during those earliest years of our nation and now.²

Post-Colonial	Now
<ul style="list-style-type: none">Chartered for a clear purpose, usually a public good, such as building a bridge.Charters revocable if their purpose was not fulfilled.Charters for a limited time (20-30 years)Charter-specified limits on attainable profits, and usually defined goals related to the public interest.Liability and responsibility of corporate owners and stockholders often <i>not</i> limited.Not allowed to own stock in another corporation.Prohibited from making <i>any</i> political contributions, direct or indirect.	<ul style="list-style-type: none">General purpose charters with no fixed national allegiance.Private and publicly-traded entities with no checks on fulfillment of purposePossibility of perpetual existenceMaximization of shareholder profit goal above all other goals, including the public good.Owners and stockholders exempted from standard civil and criminal liabilityCorporations may buy or merge with other corporations.Disproportionate influence in the political process.

While undesirable to our nation's founders, the expansion over the years of corporate privileges came through the legislative process, not through constitutional rights. However, this explosion of privileges apparently wasn't enough for the large corporations. They wanted more - the same rights as real people, and many Supreme Court Justices gradually obliged them, beginning with a (and former railroad president) court reporter in *Santa Clara County v. Southern Pacific Railroad*, 1886.

Corporate Constitutional Rights

Activist Supreme Court decisions have granted constitutional rights to corporations under the 1st, 4th, 5th, 6th, 7th, and 14th amendments. Often involving justices with conflicts of interest,³ the Court has, for example, granted statutory entities the right to

- spend unlimited amounts of corporate treasury dollars to electioneer against citizen initiatives, and for or against political candidates,⁴
- prevent regulatory inspections,⁵
- withhold from the public, information that might protect consumers,⁶
- market tobacco products to children and youth;⁷
- pollute the public air, water, and land without accountability,⁸
- move into communities even when the people have voted to keep them out,⁹
- market junk food and violent "entertainment" to our children despite pediatricians' warnings and evidence of negative impacts.¹⁰

Supreme Court decisions giving corporations constitutional rights, and classifying money as speech, have resulted in the wielding of too much political power by the largest corporations and the most wealthy citizens. Does anyone really believe that the long-standing and harmful American denial of the reality of the climate crisis is unrelated to too much corporate power in the media and halls of Congress, as it was previously able to deny the major health impacts of smoking tobacco? What about the effects of such corporate power on the nation's ability to improve its health care system? On the nation's huge military budget and policies that involve military action?

Negative Impacts

The impacts of this disproportionate power on our nation's population are many and severe, including

- crops destroyed, people killed and uprooted by scientist-predicted increases in severe storms, heat-waves, droughts, hurricanes and floods due to climate change,¹¹
- a proposed defense budget that exceeds the amount requested by the military¹²
- \$20 billions spent by corporations on lobbying between 1998 and 2010 (and \$0.4 billion by unions),¹³
- a recent "model daily schedule" recommendation to some new members of Congress that they allot 4 hours per day to calling potential donors,¹⁴
- small farm owners being sued by Monsanto because their farms were contaminated by wind-born genetically modified and patented seeds¹⁵
- people getting sick and dying from food contamination and chemically polluted environments¹⁶
- corporate patenting of human genes,¹⁷ and control over supplies of essential medicines,¹⁸
- citizens threatened with being sued by a corporation over possible effects of citizens' speech on corporate economic interests,¹⁹

- a population that outspends all other countries on health care without excellence in health quality indicators that would reflect this,²⁰
- hugely increased income disparity resulting in a steep decline of the middle class and sharply increasing rates of childhood poverty,²¹
- epidemic rates of adult and childhood obesity,²²
- loss of childhood innocence, increased fearfulness, and aggressiveness due to widespread and increasingly explicit violence in the entertainment media and videogames,²³
- trade agreements facilitated by international corporations resulting in the over-ruling of American regulations and loss of American jobs from out-sourcing to other countries,²⁴ and of course,
- perceptions of our government as corrupt and unresponsive to everyday people, thereby discouraging citizen participation.

Urgency of This Situation

We believe the evidence is clear that our democracy is in crisis, already exhibiting many of the characteristics of a plutocracy, and affecting our population in major and clearly negative ways. When compared with this, change-related problems for some public interest-serving statutory entities seem to us to be small and easily addressed by current governmental processes.

We expect that this will be especially true once the huge involvement of the mega-corporations and ultra-wealthy in our political system is reduced in scope and power until it is comparable to that of everyday citizens, small business owners, and public interest nonprofits. This will require truly effective campaign finance reform, which cannot be accomplished until the very controversial legal fictions of corporate personhood and money as speech are reversed.

The only solution we can trust is a constitutional amendment addressing these issues.

**-- Oregonians for Restoring Constitutional Democracy
Jan 2013**

¹ Howard Jay Graham, *Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the "Conspiracy Theory", and American Constitutionalism*. Madison: State Historical Society of Wisconsin, 1968.

² Thom Hartmann, *Unequal Protection* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 2010). See especially pp. 94-97.

³ *Ibid.* (See pages 16-19, 42-44 regarding 1886 *Santa Clara* decision); Jeffrey D. Clements, *Corporations are Not People* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 2012), see pp. 17-26 regarding Lewis Powell, U.S. Chamber of Commerce memo, *Buckley v. Valeo*).

⁴ *Citizens United v. FEC*, 2012; *First National Bank of Boston v. Bellotti*, 1978.

⁵ Based on the 4th Amendment, *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *See v. City of Seattle*, 387 U.S. 541 (1967); *Dow Chemical v. The United States*, 476 U.S. 227 (1986).

⁶ Based on the 1st Amendment: *Pacific Gas & Electric Co. v. Public Utility Commission of California*, 475 U.S. 1 (1986); see http://www.nytimes.com/2012/03/01/business/us-judge-rejects-gruesome-cigarette-labels.html?_r=0.

⁷ *Lorillard Corporation v. Reilly*, 533 U.S. 525 (2001).

⁸ See <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240832/pdf/ehp0110-000445.pdf>; Thom Hartmann, *Unequal Protection* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 2010) See page 251.

⁹ Based on the 14th Amendment: Ted Nace, *Gangs of America: The Rise of Corporate Power and the Disabling of Democracy* (2005), p. 248; see *Louis K. Liggett Company v. Lee*, 288 U.S. 517 (1933).

¹⁰ See American Academy of Pediatrics (see <http://www2.aap.org/sections/media/resources.cfm#policy>).

¹¹ "NOAA: 2012 to Rank as Second Costliest U.S. Year Since 1980"

(<http://www.guardian.co.uk/environment/2012/dec/21/climate-change-natural-disasters>); "Climate Change Kills 400,000 a Year, New Report Reveals" (<http://www.thedailybeast.com/articles/2012/09/27/climate-change-kills-400-000-a-year-new-report-reveals.html>); http://www.huffingtonpost.com/2011/11/07/health-costs-of-climate-c_n_1080473.html; "Human Health Impacts and Adaptation" (<http://www.epa.gov/climatechange/impacts-adaptation/health.html>).

¹² "House panel okays more defense money than requested" CBSNews.com, May 10, 2012

(http://www.cbsnews.com/8301-250_162-57431781/house-panel-oks-more-defense-money-than-requested/)

¹³ Jeffrey D. Clements, *Corporations are Not People* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 2012), see pp. 86-87 (data from Senate Office of Public Records as of Jan 31, 2011).

¹⁴ *The Week*, January 25, 2013, under "Noted."

¹⁵ See http://www.usda.gov/documents/ac21_report-enhancing-coexistence.pdf, pp. 9, 58-59; also <http://www.monsanto.com/newsviews/Pages/why-does-monsanto-sue-farmers-who-save-seeds.aspx>.

¹⁶ "Ball Park Franks Fiasco: 21 Dead, \$200,000 Fine" (<http://www.commondreams.org/views01/0726-04.htm>); and Jeffrey D. Clements, *Corporations are Not People* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 2012), see pp. 39-47.

¹⁷ See

<http://www.law.com/corporatecounsel/PubArticleFriendlyCC.jsp?id=1202573593552&slreturn=20130021175158>.

¹⁸ Ibid.

¹⁹ See http://en.wikipedia.org/wiki/Strategic_lawsuit_against_public_participation; also

http://www.huffingtonpost.com/michele-simon/pink-slime-lawsuit-may-be_b_1919830.html.

²⁰ "For Americans Under 50, Stark Findings On Health," *New York Times*, Jan 9, 2013.

²¹ The proportion of school children qualifying for free and reduced price lunches in the Portland, OR schools has risen from less than a third in the 1990's to 53% currently (*The Oregonian*, Jan 2, 2013); see charts from the Congressional Budget Office, The Tax Foundation, and The Senate Joint Committee on Taxation at <http://www.motherjones.com/politics/2011/02/income-inequality-in-america-chart-graph>;

²² <http://www.oecd.org/els/healthpoliciesanddata/49105858.pdf> the U.S. has the highest rate of increase in obesity of all other OECD countries.

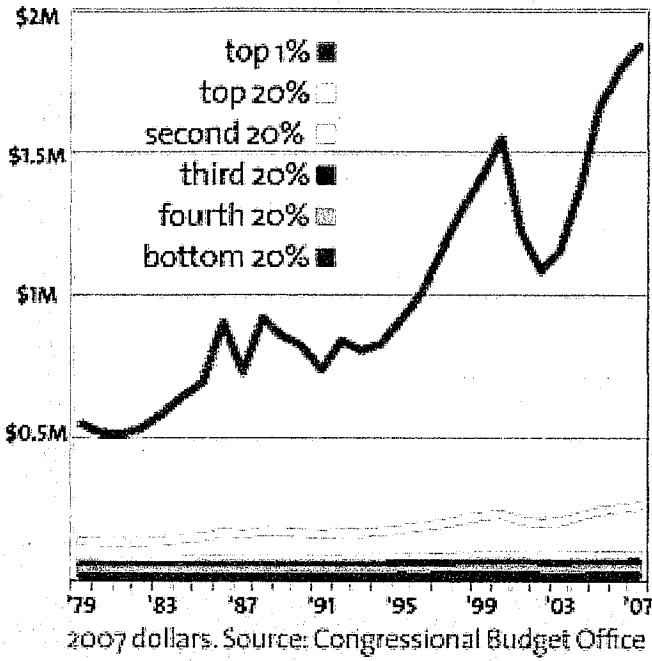
²³ Huston, A.C., Bickham, D. S., Lee, J. H., & Wright, J. C. (2007). From attention to comprehension: How children watch and learn from television (pp. 41-64). In N. Pecora, J. Murray, & E. A. Wartella (Eds.), *Children and television: Fifty years of research*. Mahwah NJ: Lawrence Erlbaum.

²⁴ Thom Hartmann, *Unequal Protection* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 2010). See especially pp. 252-253.

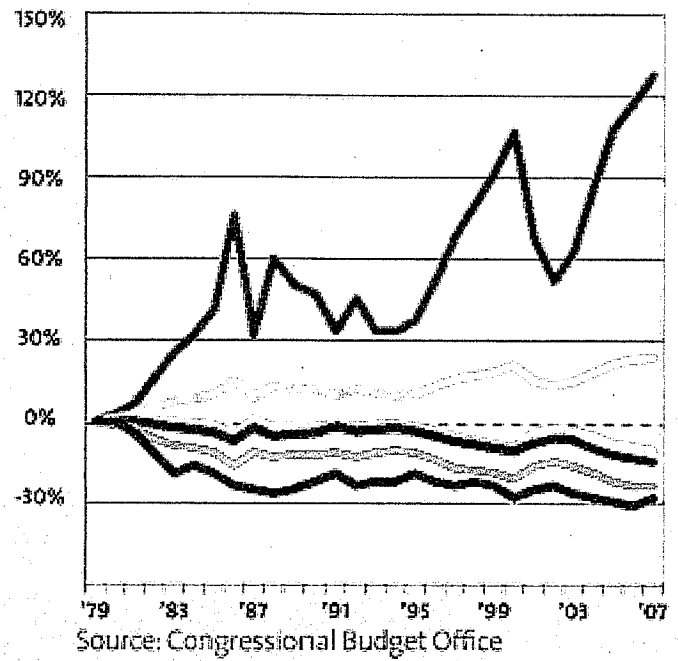
Growth in U.S. Income Disparity

1979 to 2007

AVERAGE HOUSEHOLD INCOME
before taxes



CHANGE IN SHARE OF INCOME
vs. 1979, after taxes





Corvallis Area Move to Amend Basic Points

- **Big money in elections fosters corruption.** Fair and open elections are essential to democracy, but unlimited and unregulated spending on election campaigns increases candidates' dependence on large donors that foster corruption, giving the largest donors far more influence on the actions of the United States government than the average citizen has.
- Free speech is a fundamental freedom and inalienable right of all natural persons, but **spending money to influence elections was not meant to be protected under the First Amendment** by our founders. Our Constitution was not meant to give corporations the legal status of persons, either.
- The health of our democracy has been eroded due to the Supreme Court's gradual development of the dual legal fictions that corporations are people and money is speech. The most notorious case was the 5 to 4 decision referred to as *Citizens United v. FEC*. **These legal fictions prevent public campaign financing and regulation.**
- Currently communities can't protect their neighborhoods, small businesses and preferred quality of life from the invasion of big box stores due to corporate personhood. **Removing the legal "personhood" of corporations, gradually (and nefariously) gained through Supreme Court decisions over many years, would allow We the People to cut the stranglehold the mega-corporations have over the decision-making and wellbeing of our communities, nation, and world.**
- **Regulating expenditures on campaigns for public office would help ensure that the mega-corporations and wealthy individuals don't have unfair influence over who gets elected and their subsequent decisions.**
- **The Constitution needs to be amended to state that corporations are not people and money is not speech, as advocated by the Move to Amend Coalition. This amendment would gradually return to We the People full democratic control over our government.**

Resources used for this presentation:

Unequal Protection by Thom Hartmann

Corporations are Not People by Jeffrey D. Clements

Gangs of American by Ted Nace

Read more at <http://movetoamend.org/or-corvallis>.

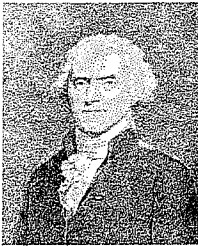
Why Principled Conservatives Should Support an Amendment to Abolish Corporate Personhood

May 21, 2012

There are many reasons why a principled conservative would want to have the Citizens United v FEC Supreme Court decision reversed by abolishing corporate personhood and ending the doctrine that money is a form of speech. Whereas an unprincipled conservative will put the interests of corporations (property) ahead of the interests of citizens no matter what the consequences, a principled conservative would be concerned about the common good of the Republic. Contributing to this article were Paul Westlake, ACPN board member and author of The Human Rights Amendment and David Cobb, field organizer for Move to Amend.

Conservative Reasons to Abolish Corporate Constitutional Rights

The American Revolution was explicitly anti-corporate, and the revolutionaries made sure that corporations were tightly controlled.



The word corporation does not occur in the Constitution. Corporations had to use unelected, unaccountable judges to give them rights.

According to Thomas Jefferson, judges, who grant corporations rights, are “playing God” because he claimed in the Declaration of Independence that men — not property — are “*ordained by their Creator with certain inalienable rights.*”

Judge-made law is not democratic. We did not elect the Supreme Court justices, but they get to decide who does and does not count in our democratic order. Congress and the People should decide those issues.

This is not about opposing business or capitalism, and we recognize that corporations play an important role in society. However, we agree with the Founders that corporations do not have the inherent, inalienable constitutional rights of a human being. This is the fundamental principle at stake here. Human rights are for humans. A corporation is not a human being; it is property. Humans have property rights; properties do not have human rights. Corporations should have privileges, not rights. The sole purpose of a corporation is to amass profit and consolidate wealth. They are legally required and structurally designed to make money at any cost. This makes them dangerous to people and democratic order.

The structure of a corporation separates humans from their actions. They destroy responsibility and hijack decision-making. They make humans do things collectively that they would never do as individuals: poison water, deny healthcare and destroy the planet.

A person is a private entity with rights and sovereignty. A corporation is a public entity with obligations and responsibilities. The American people are sovereign over the government, not the other way around. We should also be sovereign over everything the government creates. All legal fictions are creations of government. If the creation is given power over the creator, then sovereignty is lost.

For the first seventy-five years after the Revolution, corporations could only exist if they served the

public good. They were severely restricted in their activities: they had to be chartered by a vote of the state legislature, they could only exist for a certain number of years, they couldn't own other corporations, they could be dissolved once they had earned a certain profit margin, they couldn't donate to political or charitable causes, they had to operate in the state they were chartered in, their stockholders were local, they could only do the certain task they were chartered for, and they couldn't own land that was not necessary for carrying out business.

A human being thinks, tries to make ethical decisions, and is motivated by obligations to family and community. A corporation is merely an artificial entity created to conduct business. As Supreme Court Justice William Rehnquist observed in Pacific Gas & Electric Co. v. Public Utilities Commission [1986] *"To ascribe to corporate entities an 'intellect' or 'mind' for freedom of conscience purposes, is to confuse metaphor with reality."*



There is also the Rehnquist dissent in First National Bank of Boston v. Bellotti (1977). That entire dissent is worth reading for everyone, but especially for conservatives as he was, in fact, a conservative.

"I would think that any particular form of organization upon which the State confers special privileges or immunities different from those of natural persons would be subject to like regulation, whether the organization is a labor union, a partnership, a trade association, or a corporation. The blessings of perpetual life and limited liability ... so beneficial in the economic sphere, pose special dangers in the political sphere."

There is also the issue of foreign entanglements in our Republic. Corporations have shareholders all over the world and some corporations have majority shareholders outside the United States, not to mention foreign corporations with American subsidiaries. No truly principled conservative can possibly think that allowing foreign powers to have ANY influence on our political process is acceptable.

Conservative Reasons to End the Doctrine that Money is Speech

In Buckley v. Valeo (1976), the Court has ruled that money equals speech. The corollary is this: people, who have money can speak, and people who don't, can't. This is how a plutocracy is defined, not a democratic Republic.

Conservatives rightly abhor "Judicial Activism," which happens when judges base their ruling on personal or political considerations rather than on existing law. The phrase is traced to Thomas Jefferson, who decried the "despotic behaviour" of federal judges who usurp the power of the elected branches of government, thus damaging the rule of law and our Constitutional right to a Republican form of government (Article IV).

Buckley is another example of "judge-made law," or judicial activism. The purpose of the Supreme Court is to ensure that laws passed by Congress pass Constitutional muster if they are challenged by American citizens or groups. (Suing is not a Constitutional right, and corporations have had that ability for centuries.) **No where in the Constitution does it state that money is a form of speech.** The assertion that money is speech is legislating from the bench, plain and simple.

Buckley usurped Congress' power to regulate the manner of elections. The Constitution is very clear about this. Article I, Section IV states, *"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the*

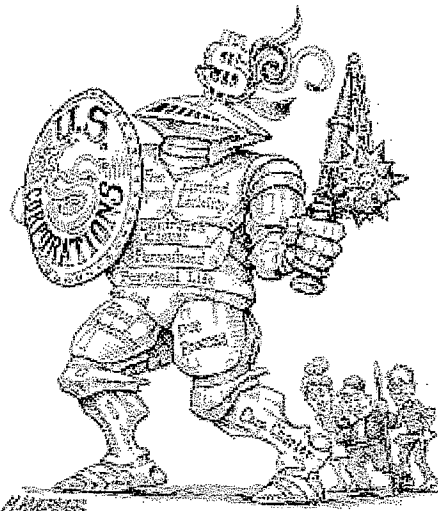
Congress may at any time by Law make or alter such Regulations, except as to the Place of Choosing Senators.” Both Buckley and Citizens United are fundamentally un-Constitutional decisions and represent a power-grab by the Supreme Court.

Citizens United vs. FEC

Citizens United is an activist decision by any definition of judicial activism. It is activist in its disregard of constitutional history, tradition, Supreme Court precedent, and the considered views of the President and Congress. It is precisely the kind of divisive and unnecessarily sweeping decision that Chief Justice John Roberts pledged to avoid in his confirmation hearings and after, when he said he would try to promote narrow, unanimous opinions, rather than deciding hotly contested questions by ideologically polarized, 5-4 votes. The broad rhetoric in Citizens United about the rights of corporations, combined with the apparent willingness of the 5-4 conservative majority on the Roberts Court to invalidate federal regulations that have broad bipartisan support, could lead to future confrontations between the Supreme Court and Congress on matters of economic fairness that citizens care intensely about. (George Washington Law Professor Jeff Rosen).

The Republic in Crisis

Corruption of moneyed influence in government is legal, and the role of money in politics has rendered our Republic corrupt. What principled conservative wants to have a government of the wealthy, by the wealthy and for the wealthy or worse: a government of the corporations, by the corporations and for the corporations? The United States was intended to be a democratic Republic, but a long series of Supreme Court decisions have rendered the polity, our polity, a mere tool of the corporate elite. This is not just about getting corporate money out of elections.



The only real, lasting solution to this crisis of money in politics and Washington is a people's movement to amend the Constitution and overturn the un-democratic decisions that have usurped Congress' power and rendered our system of government a tool for powerful and wealthy corporate elites to abuse in order to further their narrow interest of maximizing profits. If this movement is to be successful, it must involve all concerned citizens, no matter what their ideology. Conservatives, those with principles they share with the Founding Fathers, will certainly be as much a part of the effort to end this crisis of plutocracy and corporatism as anyone else. In fact, they have already demonstrated as much with a vote of support for ending both corporate personhood and the doctrine that money is speech. Recently, Republican Party primary voters in West Allis, WI approved by 70% a resolution calling for an amendment to the US Constitution that would overturn the 2010 Citizens United Supreme Court. That proves that principled conservatives support this movement. Mostly

reactionaries, about 20% of the American public, support corporate personhood (corporate Constitutional rights). Indeed, corporations need and should have privileges, but not Constitutional rights.

TransPacific Partnership Will Undermine Democracy, Empower Transnational Corporations



March 27, 2013

Margaret Flowers and Kevin Zeese

TruthOut

Our country's democratic values could be under threat if President Obama fast tracks the Trans-Pacific Partnership.

On critical issues, the massive Trans-Pacific Partnership (TPP) being negotiated in secret by the Obama administration will undermine democracy in the United States and around the world and further empower transnational corporations. It will circumvent protections for health care, wages, labor rights, consumers' rights and the environment, and decrease regulation of big finance and risky investment practices.

The only way this treaty, which will be very unpopular with the American people once they are aware of it, can be approved is if the Obama administration avoids the democratic process by using an authority known as "Fast Track," which limits the constitutional checks and balances of Congress.

If the TPP is approved, the sovereignty of the United States and other member nations will be dissipated by trade tribunals that favor corporate power and force national laws to be subservient to corporate interests.

Circumventing the Checks and Balances of US Democracy

President Nixon first developed the idea of "Fast Track" in 1973 as a way to secure Congressional approval of trade agreements, and it has been a key to passing many unpopular agreements such as the World Trade Organization (WTO) and NAFTA. As people have caught on to the offshoring of jobs and other detrimental consequences of these agreements, civil society now understands how important it is to not allow a president to circumvent the democratic role of Congress. Fast Track expired in 2007, so President Obama must have it re-instated in order to pass the TPP. His administration is moving to have Fast Track approved and hopes it will happen by this summer.

Under Fast Track, the president was allowed to negotiate and sign trade agreements with whatever countries the executive branch selected - all before Congress voted on the agreement. Fast Track meant that the Congressional committee processes were circumvented and the executive branch was empowered to write lengthy implementing legislation for each trade pact without Congress. These executive-only authored bills required US law to conform to the trade agreement. For example, Glass-Steagall had to be repealed under President Clinton to conform to the WTO. And, Fast Track empowered the president to submit the executive-branch written bill for a mandatory vote within a set number of days, with all amendments forbidden, normal Senate rules waived, and debate limited in both chambers of Congress. Fast Track clearly undermined democracy.

Indeed, Fast Track turned the US Constitution on its head. Under Article I Section 8, Congress has exclusive authority "to regulate commerce with foreign nations" and to "lay and collect taxes [and] duties." Under the Constitution, the president is empowered to negotiate treaties, but Congress must vote to approve them. Thus, Fast Track took constitutional power from Congress and prevented the checks and balances needed to prevent an imperial presidency.

For most of the history of the United States, treaties and trade agreements went through the normal congressional process described in the Constitution. Fast Track is a relatively new concept that coincides with an era of increasing presidential power, which includes the power to declare war and to murder US citizens without warning or judicial oversight. If Congress had reviewed agreements such as the WTO and NAFTA beforehand and civil society had been able to participate in a democratic process, would the United States have made the mistake of passing these laws that have so injured our economy and others?

Fast Track is very unpopular, so now President Obama and others who advocate for it do not use the term. Instead they call it by the euphemism "Trade Promotion Authority." But changing the name does not change what it is - a method of ceding the constitutional power of Congress and undermining the checks and balances built into the constitutional framework.

Congress needs to consider what agreements such as the TPP will do to jobs, trade balances and the environment. Since Nixon, Fast Track has been used by presidents to go way beyond trade and tariffs. These agreements have been used to change US law by establishing "rules related to domestic environmental, health, safety and essential-service regulations, including deregulation of financial services; establishment of immigration policies; creation of limits on local development and land-use policy; extension of domestic patent terms; establishment of new rights and greater protections for foreign investors operating within the United States that extend beyond US law; and even limitation of how domestic procurement dollars may be spent." Thus, not only has the constitutional power of Congress to regulate commerce with foreign nations been undermined, but a whole host of domestic laws have been rewritten to satisfy international trade.

The TPP Undermines US Law, Prevents Progressive Policy Around the World

The TPP is much broader than the usual trade agreement and will impact many aspects of society from the Internet to health care to regulation of risky bank speculation. For this reason alone, it is

especially important to have a transparent, public debate on the agreement. The TPP contains 26 chapters, but only five of them concern traditional trade issues. The TPP has been negotiated in secret except for over 600 corporate representatives who have been advising the US trade representative on its language. In Washington, DC K Street lobby firms have been getting involved in the process, including pushing for Fast Track. Many of those corporations that have failed to get what they want from Congress are now getting their way through the secret back door of the TPP.

Though the TPP negotiations are being conducted in secrecy, portions of the text have been leaked. Here is what is known about some of the key issues that the TPP will affect:

Prevent Buy America Manufacturing Preferences: The TPP's procurement chapter ends 'Buy America' preferences by requiring that all firms operating in any signatory country are provided equal access to US government procurement contracts over a certain dollar threshold, the same access that domestic firms have. To implement this, the United States would agree to waive "Buy America" procurement policies.

Undermine Environmental Laws and Regulations: Similarly, governments who are seeking to encourage localization and green manufacturing through procurement preferences will be stopped. A recent example involved Ontario, Canada, which has employed a renewable energy program that requires energy generators to source solar cells and wind turbines from local businesses so as to cultivate a robust supply of green goods, services and jobs. The program has earned acclaim for its early success in generating 4,600 megawatts of renewable energy and 20,000 green jobs. But, the WTO ruled that this violated WTO rules. In another case, a US company Lone Pine Resources is suing the Canadian government under NAFTA for more than \$250 million due to lost profits from Quebec's moratorium on fracking, which prevents Lone Pine from fracking under the St. Lawrence River. This is not an isolated incident:

... corporations such as Chevron, Exxon Mobil, Dow Chemical, and Cargill have launched 450 investor-state cases against 89 governments, including the United States. Over \$700 million has been paid to corporations under US free trade agreements and bilateral investment treaties, about 70 percent of which are from challenges to natural resource and environment policies.

Corporations have launched attacks on a range of public interest and environmental regulations, including bans or phase-outs of toxic chemicals, timber regulations, permitting rules for mines, green jobs and renewable energy programs, and more.

Undermine Internet Freedom: The Electronic Freedom Foundation (EFF) argues that the intellectual property chapter (see the February 2011 draft US TPP IP Rights Chapter [PDF]) would have extensive negative ramifications for users' freedom of speech, right to privacy and due process, and hinder peoples' abilities to innovate. Its provision on copyrights will adversely affect the creator's ability to create content, the ability of technology companies to make innovative products, and the ability of users to use content in new ways. EFF summarizes the attack on Internet freedom by the TPP, writing:

In short, countries would have to abandon any efforts to learn from the mistakes of the US and its experience with the DMCA over the last 12 years, and adopt many of the most controversial aspects of US copyright law in their entirety. At the same time, the US IP chapter does not export the limitations and exceptions in the US copyright regime like fair use, which have enabled freedom of expression and technological innovation to flourish in the US. It includes only a placeholder for exceptions and limitations. This raises serious concerns about other countries' sovereignty and the ability of national governments to set laws and policies to meet their domestic priorities.

Destroy Food and Agriculture: Agriculture trade rules have both undermined US producers' ability to earn a fair price for their crops at home and in the global marketplace. Multinational grain-trading and food-processing firms have made enormous profits, while farmers on both ends have been hurt. The results are that hunger is projected to increase, along with illicit drug cultivation, and undocumented migration. Dairy farmers fear the TPP could decimate the US dairy industry and have urged Congress to refuse to Fast Track it. Failure to establish new agriculture terms would intensify the race to the bottom in commodity prices, pitting farmer against farmer and nation against nation to see who can produce food the cheapest, regardless of labor, environment or food-safety standards. Regarding food safety, current trade agreements contain language requiring the United States to accept imported food that does not meet our domestic safety standards and limiting inspection of imported foods and products. The TPP is expected to continue these practices.

Prevent Health, Safety, Environment, Consumer and Labor Laws: According to leaked documents, the TPP contains provisions with special rights for corporations. The provisions protect investors by providing them with compensation for loss of "expected future profits" from health, labor, environmental and other laws. The negative effect is that nations will not pass laws that threaten corporate profits in order to avoid lawsuits and heavy fines. Court cases in which corporations are suing governments over laws and regulations that cause loss of expected profit will be tried before a trade tribunal of three judges. These judges can include corporate lawyers on temporary leave from their corporate job while they serve as judges. Global Trade Watch reports that under previous trade agreements "Over \$3 billion has been paid to foreign investors under US trade and investment pacts, while over \$14 billion in claims are pending under such deals, primarily targeting environmental, energy, and public health policies." The right to sue governments will create a hurdle for governments considering actions to protect workers, consumers, health and the environment.

Privatize Health Care and Make it Unaffordable: Leaked documents show that the US Trade Representative is pressuring TPP member countries to expand pharmaceutical monopoly protections, which essentially trade away access to medicines. In a recent letter, Doctors Without Borders wrote that the TPP will be "the most harmful trade deal ever for access to medicines in developing countries." The TPP does this damage by inflating pharmaceutical prices through lengthy patent protections, as Doctors Without Borders writes:

One proposed TPP provision would require governments to grant new 20-year patents for modifications of existing medicines, such as a new forms, uses or methods, even without

improvement of therapeutic efficacy for patients. Another provision would make it more expensive and cumbersome to challenge undeserved or invalid patents; and yet another would add additional years to a patent term to compensate for administrative processes. Taken together, these and other provisions will add up to more years of high-priced medicines at the expense of people needing treatment waiting longer for access to affordable generics.

There is also concern that the TPP will force public health systems to open up their medication programs to pharmaceutical corporations giving them greater access and greater control over the price of medications, effectively destroying the ability of the public health system to negotiate for a low price. The same may occur with public health systems in the US such as Medicare, Medicaid, Tricare and the Veterans Health Administration, making medications more expensive and potentially out of reach for their patient populations.

In addition, countries that provide health care through a national public health program, rather than a market-based system dominated by for-profit insurance, are threatened by provisions that oppose state-owned enterprises. Corporations view state provision of services as unfair competition and therefore a violation of free trade. This will make it more difficult for the United States to adopt a single-payer health system, and it will make it more difficult for countries with such systems to protect them from privatization and health insurance domination.

Prevent Public Banks and Banking Regulation: These same provisions about state-owned enterprises will affect public banking too. North Dakota is the only state in the US to have a public state bank, although over a dozen states and cities are considering them. Public banks are used to hold taxes that are collected, administer payroll for public employees and provide loans for public projects. The advantage is that all public dollars are managed in a public institution rather than having to pay fees and interest to a private bank. But the TPP would consider public banks to have unfair advantages and therefore violate free trade.

And trade agreements protect big finance by (1) preventing regulation of the finance industry by locking in a model of extreme financial service deregulation; and (2) allowing capital to move in and out of countries without restrictions. This prevents countries from controlling the flow of capital, which has many negative consequences. Over 100 economists wrote trade representatives urging them to ensure that the TPP, unlike other trade agreements, will allow governments to control and regulate capital without the threat of investor lawsuits, writing:

Authoritative research published by the National Bureau of Economic Research, the International Monetary Fund, and other institutions has found that limits on short-term capital flows can stem the development of dangerous asset bubbles and currency appreciations, grant nations more autonomy in monetary policy-making, and protect nations from the dangers of abrupt capital flight. See 102 Economists Issue Statement on Capital Controls and TPP

Thus, the TPP and other corporate trade agreements will undermine the ability of governments to regulate health, safety, labor, environment and finance. The 600 corporate advisers to the TPP see this as an opportunity to do an end-run around laws and policies that they have been unable to put

into effect through the normal democratic process. This is why the TPP is being called a global corporate coup that makes corporations more powerful than governments.

Corporate Trade Agreements Hurt the US Economy

The evidence is stark that so-called 'free' trade agreements, really corporate trade agreements, are bad for the US economy.

Newly-released government trade data for 2012 show job-eroding US trade deficits have ballooned in countries with which the US has a corporate trade agreement and have declined in the rest of the world. The numbers are stark. In countries where the US has a trade agreement, the trade deficit has grown by more than 440 percent, while in countries where there is no agreement, the deficit has declined by 7 percent. In fact, the aggregate US trade deficit with trade-agreement partners is more than five times higher than it was before the deals went into effect, while the aggregate deficit with non-trade-agreement countries has actually fallen slightly.

And, this means a tremendous loss of jobs. Using the Obama administration's net exports-to-jobs ratio, the FTA trade deficit surge means the loss of nearly one million American jobs.

We should have learned this lesson from NAFTA because what we are seeing with corporate trade agreements since NAFTA is more of the same. Under NAFTA, the US deficit with Canada ballooned and the small US surplus with Mexico turned into a \$100 billion-plus deficit. As a result of NAFTA, the United States lost 692,000 jobs according to the Economic Policy Institute.

But, instead of learning from NAFTA, President Obama pushed a trade agreement with South Korea, promising it would result in economic benefits for the United States. One year has now passed since the Korean trade agreement was put into effect and the US ended up with the same result as it experienced with NAFTA. Eyes on Trade reports:

US goods exports to Korea have dropped 9 percent (a \$3.2 billion decrease) since the Korea FTA took effect, in comparison to the same months in the year before FTA implementation. US imports from Korea have climbed 2 percent (an \$800 million increase). The US trade deficit with Korea has swelled 30 percent (a \$4 billion increase). The January data from the US International Trade Commission show that the US trade deficit with Korea skyrocketed 81 percent above December's level, topping \$2.4 billion – the largest monthly US trade deficit with Korea on record. The ballooning trade deficit indicates the loss of tens of thousands of US jobs."

Exports are not as robust as advocates of trade agreements would like to believe. Between 2002 and 2012, US exports to trade-agreement partner countries grew annually at a rate of only 4.8 percent, while exports to non-trade-agreement countries grew at 6.6 percent per year on average. This has only worsened with the passage of the Central America Free Trade Agreement (CAFTA) in 2005, which nearly doubled the number of trade-agreement countries. Since then, average US export growth to non-trade-agreement countries has topped average export growth to trade-agreement partners by 46 percent.

Advocates for corporate trade agreements manipulate statistics in order to make a false claim of economic benefit from the agreements. They create obvious falsehoods by not counting many major trade agreements put in place before 2003. This would exclude big agreements like NAFTA, count "re-exports" - goods made elsewhere that are shipped through the United States en route to a final destination, omit imports in their calculations so people do not see the trade imbalance, and not correct for inflation in order to exaggerate exports.

Sadly, rather than being honest about the failure of corporate trade, the Obama administration works overtime to mislead the public. The recently released 2012 annual trade report leaves out critical details from the very beginning. Eyes on Trade analyzes the Obama report:

Take the first sentence: 'Trade is helping to drive the success of President Obama's strategy to grow the US economy and support jobs for more Americans.' Almost makes you forget that last year's non-oil trade deficit rose to a five-year high, implying the loss of millions of jobs, doesn't it? How about the second sentence: 'The Obama Administration's trade policy helps US exporters gain access to billions of customers beyond our borders to support economic growth in the United States and in markets worldwide.' That's an interesting way to frame a year whose sluggish two percent export growth rate put us 18 years behind schedule in achieving Obama's export-doubling goal."

Time for a Democratic Revolt Against the TPP

A unique feature of the TPP is that it contains a "docking agreement." This means that other countries can sign onto the agreement after it has been negotiated as long as they are willing to accept the previously negotiated terms. The US started the negotiations with allies such as Australia and New Zealand and a number of small countries such as Vietnam, Brunei, Malaysia, Chile and Peru. Larger countries are able to force smaller, more desperate countries to accept terms that are detrimental to them. As more countries sign on, the TPP could become an agreement that defines global trade.

The TPP has gone through 16 rounds of negotiations in almost total secrecy. Some portions of the text have been leaked, but most remain secret. Throughout the process more than 600 corporate advisers have been working with the US Trade Representative in shaping the proposals and specific language of the text. Civil society has only been marginally involved, not provided drafts and ushered into stakeholder meetings where they can ask questions but only receive vague answers.

Despite this effort at secrecy, civil society groups have been getting organized to oppose the TPP, stop Fast Track and prevent the global corporate coup. More than 400 organizations, including our own organization, It's Our Economy, representing a diverse range of issues including labor, environment, public health, farmers, Internet freedom, banking regulation, human rights, faith, Native American and much more, have signed on to a letter to Congress emphasizing how the TPP negotiations have been "inconsistent with democratic principles," opposing Fast Track and outlining expectations of how key issues should be addressed in 21st century trade agreements.

Citizens Trade Campaign summarizes writing: "The letter includes eight broad categories that the TPP, a Trans-Atlantic Free Trade Agreement and any other US trade pact must address in order to improve quality of life for Americans and people throughout the world: (1) prioritization of human and labor rights; (2) respect for local development goals and the procurement policies that deliver on them; (3) no elevation of corporations to equal terms with governments; (4) protection of food sovereignty; (5) maintaining access to affordable medication; (6) safeguards against currency manipulation; (7) space for robust financial regulations and public services; and (8) improved consumer and environmental standards."

On February 27, the AFL-CIO released an executive council statement questioning the TPP saying "The United States cannot afford another trade agreement that hollows out our industrial base and adds to our substantial trade deficit." The executive council of the AFL-CIO went on to say, "We do not need another trade deal that simply boosts corporate profits by encouraging offshoring good jobs while undermining wages, benefits and worker rights. We must do better." Americans have clearly learned the lessons of previous trade agreements - they only work for the transnational corporations and oligarchs around the world, they undermine workers, and spur lower wages and environmental destruction.

Arthur Stamoulis of Citizens Trade Campaign summarizes the antidemocratic actions of the Obama administration with regard to the TPP saying, "This is a rollback in transparency, and an extremely undemocratic way to craft policy that is likely to influence jobs, health care costs, financial regulations, consumer safety, the environment and more for decades to come. The only way to prevent the public from being saddled with a bad agreement is for Congress to exert its authority."

The TPP is the battleground for defining democracy in the 21st century and setting up the rules for international commerce in the era of transnational corporate power. No matter what issues you are concerned about, if the TPP becomes law, it will undermine national sovereignty and hopes for progressive policies that put the people's needs before corporate profits. The time is now to get active, work to oppose the antidemocratic Fast Track approach in Congress and say "no" to the democracy-undermining Trans-Pacific Partnership. This is a trade agreement that will be opposed by most Americans and a battle on which the people can prevail, but only if they know it exists.

For more information and to get involved, visit:

The Citizens Trade Campaign

Public Citizen's Global Trade Watch

Eyes on Trade

Flush The TPP

You can listen to our interview with Arthur Stamoulis of Citizens Trade Campaign and Ben Beachy of Eyes on Trade on the TransPacific Partnership versus Democracy on Clearing the FOG.