

# *Citizens United*: Robbing America of Its Democratic Idealism

Jim Leach

Having traveled to every state in the union and spoken with people in hundreds of venues over the past several years, I have become convinced that our country has never been more blessed with extraordinary leadership in almost every field of human endeavor, from business to medicine, from the arts to academia. Yet it is becoming harder for thoughtful, independent-minded leadership to

JIM LEACH is a Fellow of the American Academy since 2010, is Chairman of the National Endowment for the Humanities. For thirty years, he served as a member of the U.S. House of Representatives from Iowa; he also chaired the Committee on Banking and Financial Services. He has taught at both Princeton University's Woodrow Wilson School and the Harvard Kennedy School.



and the right to give campaign contribu- square with the Declaration of Indepe- tions like all other citizens? Have they- ence. All men may be created equal and the political action committees- (cs) relation to each other, but not necessar- that they control not already been over- in relation to corporations or, und- empowers to infuse millions into the- zens United- in relation to how corpora- political process? Is it an accident that- ations may empower some individuals rel- the influence of moneyed interests ha- ative to others. There is great inequality increased in American politics, the gap- between corporations, no equality of between the rich and poor has widened- individual and corporate •personhood,Ž

To advance the sophistic argument that- and no equality of individuals when one more money in campaigns equates- with many corporate ties may have more more democracy, the Court had to employ- capacity to influence decision-making a linguistic gyration. It presumed that- than one with none or just a few.

money's speech- and that a corporation is an Multiple personality disorder may individual But where in any dictionary or- from time to time seem to describe a can- in any founding documents are these- elude in regard to stances taken, but it equivalencies made? never was intended to de- fine the political

Speech is the act of expressing thoughts- system itself. More money is not more feelings, or perceptions by the articu- democracy.

tion of words. It is a vocalized form of Corporate larceny is at issue; so are human communication. In pejorative democratic values. To presume that cor- jargon, money may •talk,Ž but precisely- porate money can be construed as de- ned, money is a medium of exchange- speech,Ž that speech for many will be a measure of value, or a means of pa- yered rather than free. After all, to tap ment. In the manner it is used in politics- for political purposes the assets of share- it can be considered a campaign contribu- holders or by implication union mem- tion. It is not •speech,Ž in terms of what an- pers, more than a few of whom can be strict constructionist could conceivably- expected to hold different political judg- believe the First Amendment addresses- ments than management or union stew-

A corporation is an arti- cial creation of- ards, is a •taking,Ž of their assets, a per- the state, which in turn is a creation of- version of their •speech,Ž a diminution the people. To vest an inanimate entity- of their political rights.

with constitutionally protected political What the Court has done is reason by rights makes mockery of our individual- analogy rather than constitutional logic. rights heritage. While corporations as- But analogy, like metaphor, is more suit- •legal ½ction,Ž have been given analogo- ed to poets than jurists. When used in status to individuals in aspects of com- Citizens United- the analogies are not com- mercial law, citizenship rights are of- avincing. Music, for instance, is more very different nature. A corporation can- analogous to speech than money is. not vote or run for of- ce. The inspiring- Money may be used to buy many things, words of our founders were about free- including influence, and when large men born with inalienable rights. It is they- amounts are given in the political pro- who speak. It is they who can assemble- less, conflicts of interest are created that is they who are considered equal among- undercut rather than embellish democ- each other. racy. Likewise, a monkey or a gorilla is a

To hold that a corporation is a person- closer analogy to a human being than a with citizenship rights simply does not- corporation is. But no one suggests that a

C i i  
U i :  
R b b i  
A m i c a  
I  
D m c a i c  
I a i m

primate be given citizenship rights. A human nature, the majority concluded corporation, to be sure, has shareholders that independent corporate political yet there is a distinction between a corporate expenditures •do not rise to corruption ration and its ownership. or the appearance of corruption.Ž Really?

The main way •corporate-nessŽ can be it not clear that under a free speech analogized to personhood relates to its guise the Supreme Court has authorized hierarchical structure. In the corporate influence wielders, in many cases masked world, one decision-maker or, at most, to the public, to use unlimited resources collective few are accountable for how to rob America of our democratic heri- corporate resources are allocated. Authdage?

rizing corporate leaders to distribute Our founders were moral philosophers shareholder assets...that is, other peoes well as political activists. They dwelled ple•s money...in political campaigns thus on a subject the Court ignores: human empowers small numbers of insidersnature. To constrain what was implicitly There is no escaping the reality that the considered a natural instinct of public precept of corporate personhood pushed figures to aggrandize power, John Han- American politics in an oligarchic direc-cock, Benjamin Franklin, and their fellow tion. Nor is there escaping the only delegates to the Constitutional Conven- justifi½cation for spending corporatetion followed James Madison•s lead and assets in campaigns. Money spent iadopted a governance framework for the campaigns must be considered good American republic based on Montes- investments for shareholdersquid pro quieu•s separation of powers doctrine. quosthat can be banked. Could it be thaDivided governmental authority was the Court•s de½nition of protected established in the Constitution with a •speechŽ might more accurately be desimilar legislative/executive/judicial scribed as influence buying? model triplicated in decentralized fashion

Prior to Citizens Unitedthe Supreme overlaps and continuous tension created Court implicitly recognized that citizen between levels and branches of govern- expression was different from issue advment were designed to bifurcate and con- cacy backed by money. Hence it uphebtain power. I note this background to congressionally established reportingunderscore the human dimension of requirements and limits on campaignabstract principles. No politician will giving for individuals making campaignever acknowledge that campaign contri- contributions. However, inCitizens Unitedbutions affect his or her votes or judg- corporate persons are granted •suprament. But for the public to assume that manŽ status: limited transparency re-candidates whose campaigns are sup- requirements and unlimited capacity toported by large amounts of money from spew money into the political systeminterest groups do not become indebted The Court•s lawmaking judgment cannot to these groups is to deny human nature. be challenged by Congress because hris to flout how our founders thought activist 5-4 majority has presumptuouslyabout power and the role of citizenship. held that the moneyed intervention At our country•s founding, property- capacities that it has granted corporales people as well as women and slaves tions in the political process are protectwere denied the right to vote, and there ed by the First Amendment. And lackingwas an original constitutional acceptance an evidentiary basis and appreciation forthat slaves could be considered three-

1/2 of a person for legislative and Electoral College apportionment. But none of our founders ever advanced the notion that one individual could be several persons and have magnified influence based on control of corporate assets.



vancing equal justice begins in the 1<sup>st</sup> and second estates before it becomes the responsibility of the third estate, where judges, generally speaking, are tasked with interpreting and enforcing rather than making law. Citizens United being a sparingly embraced, lawmaking exception.

The standard of judiciousness in the making of law is fairness, while the standard of judiciousness in the adjudication of law is allegiance to the letter of law and its constitutional framework. Hence from an equal justice perspective, the judiciary should be acutely concerned about law-