



Corporate Personhood and the “Right” to Harm the Environment

Concerned with the environmental threat posed by factory hog farms, nine townships in Pennsylvania have passed ordinances banning corporate ownership of farms. Opponents have filed a lawsuit, however, claiming that such laws are unconstitutional because they violate a corporation's rights under the First and 14th Amendments and the Commerce Clause of the Constitution.

Why is it that corporations can claim constitutional rights? Wasn't our Constitution written in the name of "We the people"?

It was, of course, and the Constitution does not even mention corporations. But in 1886 the Supreme Court started down a treacherous path by viewing corporations as "people" with rights to equal protection under the 14th Amendment. Since that time the Court has granted "corporate persons" additional rights under the First, Fourth, Fifth, Sixth, and Seventh Amendments.

What we call "corporate personhood" has resulted. Rights originally meant to protect human beings from the potentially oppressive powers of our government now belong as well to the corporation, an artificial entity. Corporations claim these constitutional rights in Federal court as they attempt, often with success, to overturn, weaken, or get around laws designed to protect the environment.

The First Amendment

" . . . no law . . . abridging the freedom of speech. . . "

– First Amendment

The First Amendment right to free speech has been broadened by the courts to allow corporations to give campaign contributions, lobby legislators, run advertisements that support their interests, exercise the right not to speak, and paint their activities as "green."

When President George W. Bush ran for governor of Texas, he received more than \$4 million in campaign donations from companies that have benefited greatly from the Texas Environmental, Health, and Safety Audit Privilege Act, which he signed soon after taking office.² This law says that companies need not report their violations of environmental regulations to law enforcement officials or to the public. Nor can they be penalized for self-reported violations. Some 25 other states have passed similar audit privilege laws in the past decade.

The Fourth Amendment

"The right of the people to be secure. . . against unreasonable searches and seizures. . . "

– Fourth Amendment

Under many circumstances, corporations have the right to "shut the door" on government inspectors who lack a search warrant. The resulting delay may be enough for a company to cover up signs of wrongdoing. Even if evidence is collected under a search warrant, there is no guarantee that it will hold up in court.

Riverdale Mills, a wire-mesh manufacturer, sits on the Blackstone River near Worcester, Mass. In 1997, the Environmental Protection Agency (EPA) received an anonymous tip from an employee that the mill's wastewater treatment system was not working. Agents got a search warrant to investigate what was going on and collected evidence that was used by the government to indict Riverdale's owner on two counts of violating the Clean Water Act. The case fell apart, however, after the judge handling the case threw out key evidence (water test results) because the EPA took samples on the mill property without informing the owner. Apparently, having a search warrant is not even enough.

The Fifth Amendment

" . . . nor shall any person . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." – Fifth Amendment

Corporations have the right to challenge governmental actions that protect the environment by claiming they are "takings" of their property rights. Further, the government may be required to provide monetary compensation for any consequent reduction in property value, even intangible property value such as lost potential profits.

Florida Rock Industries applied for a permit to mine limestone from 1,500 acres of wetlands in the Florida Everglades in the early 1990s. The U.S. Army Corp of Engineers denied the permit because the risks of pollution and habitat destruction were high. Florida Rock sued successfully to get compensation for a regulatory taking, even though the company had the opportunity to sell the property for more than twice as much as it paid.⁵ The government could end up paying Florida Rock tens of millions of dollars.

In 1986, Monterey, CA rejected the application of Del Monte Dunes Corporation to build a residential complex on environmentally sensitive sand dunes. The state eventually purchased the property from the company for a public park, paying more than the original purchase price. Nevertheless, Del Monte Dunes sued for a takings on the basis that the company would have made much more money if allowed to build. The jury hearing the case awarded the company \$1.45 million.⁷ Other "personhood rights" were claimed by Del Monte Dunes in this case as well: the 14th Amendment (due process and equal protection) and the Sixth and Seventh Amendments (right to trial by jury).

The 14th Amendment

" . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." – 14th Amendment

By using the cry of "equal protection" to open the courts to them, corporations can evade, if not overturn, regulations while conducting business as usual.

Gwaltney of Smithfield Ltd. operated a meatpacking plant on the Pagan River in Smithfield, Virginia. Between 1981 and 1984, the company repeatedly violated the conditions of its permit to pollute by discharging excessive quantities of five pollutants. The Chesapeake Bay Foundation and Natural Resources Defense Council sent notice of their intent to file a citizens suit under the Clean Water Act. But they got

nowhere: the court ruled that citizens could sue a corporation only for an ongoing violation of the law.⁸ Because citizens must provide polluters with a 60-day notice of intent to sue, violators have the opportunity to do a "quick fix" and so avoid litigation.

By asserting their personhood rights, corporations are able to influence legislation and gain access to the courts. The total effect is devastating, with no part of our environment left untouched. Corporations not only find ways to avoid or minimize regulation but use their wealth and power to slow or halt enforcement. We need to accept that there is no point in continuing to play the same game. Corporations have shown that they are better at it. But if we abolish corporate personhood, they lose the constitutional rights that have permitted them to trump democratic processes. If we recognize that corporations are legal entities, created and defined by the authority of government – and extended privileges rather than rights, we will help lay the foundations for the creation of a true democracy.

SIGNPOSTS ALONG A TREACHEROUS PATH

Corporations gained their constitutional "rights" to fight environmental regulation through a series of precedent setting Supreme Court decisions. Cases that yielded these decisions include:

- **14th Amendment:** Santa Clara County v. Southern Pacific Railroad [118 U.S. 394 (1886)] Corporations are included in the word "person" in the 14th Amendment and given equal protection under the law.
- **Fifth Amendment:** Noble v. Union River Logging [147 U.S. 165 (1893)] A corporation cannot be deprived of its property without due process. Pennsylvania Coal Co. v. Mahon [260 U.S. 393, 415 (1922)] Corporations have protection against the taking of private property without compensation. A regulation is a taking.
- **Fourth Amendment:** Hale v. Henkel [201 U.S. 43 (1906)] A corporation is entitled to protection against unreasonable searches and seizures. Marshall v. Barlow [436 U.S. 307 (1978)] Corporations have the right to demand a search warrant for monitoring of regulatory compliance.
- **First Amendment:** Buckley v. Valeo [424 U.S. 1 (1976)] Political money is equivalent to speech. Boston v. Bellotti [435 U.S. 765 (1978)] Corporations have the same rights to the First Amendment as people and can spend unlimited money to "speak" in ads to overturn referendums.

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