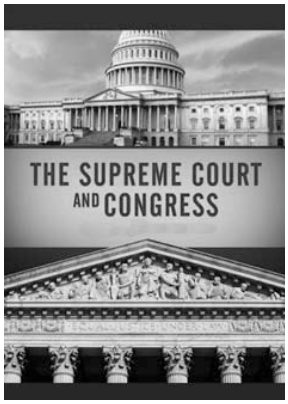

Look to Congress for Supreme Court Fix

by Jane Anne Morris

How is it unconstitutional for a state to require place-of-origin labels on meat? Regulate sale of its water? Establish worker protections stricter than federal standards? Where does the US Constitution say that states cannot require that toxic waste be sorted and labeled? Cannot include labor standards in state purchasing policy? Cannot make companies disclose what chemicals they use in products and facilities?

The Constitution is silent on these matters, but the Supreme Court has interpreted the Constitution all the way to next Tuesday in order to declare these measures unconstitutional. Supreme Court interpretations devised concepts like free speech rights for corporations, and that workhorse, money equals speech, to hobble election reform. Judicial interpretation enables corporations to use the Civil Rights Act to claim damages for being "discriminated" against. Supreme Court interpretation dished out rights, powers, and protections for corporations while repeatedly denying the same to minorities, women, and workers.

Constitutional scholars routinely describe the Court as the most powerful court in the history of the world. In addition to its untrammeled interpretive latitude, that singular institution wields a bundle of powers. It decides cases, rules on the constitutionality of acts of the executive branch, determines the distribution of powers between state and federal government, and judges the constitutionality of any law passed at any level of government. It can "call up" any court's ruling if it disagrees. Justices scan the nation's laws, and using easily rigged "test" cases, void any law not to their liking.

This power does not come from the Constitution, which, apart from a few matters (like ambassadors and Indian tribes), specifies very little about the Supreme Court. The vast powers and maxed-out discretion exercised by the Court come from the US Congress. A series of Judiciary Acts (1790, 1875, 1925, and 1988) sketch (and stretch) the dimensions of its power.

So if you are concerned that corporations have most of the constitutional rights of human persons, or that numerous "green" state and local laws are thrown out as unconstitutional, then the true object of your discontent is neither the Constitution, nor the Supreme Court, but Congress.

Congress could borrow from other countries' systems that not only tolerate less poetic license in judicial interpretation, but spread around what the current Supreme Court concentrates into one big-box power center. Special constitutional courts rule on the constitutionality of laws. A separate court decides cases between parties. Yet another court handles human rights violations, and by "human," they mean, uh, human, and not corporate persons. Sometimes, legislative bodies can overrule court decisions.

Within the US, state legislatures and members of Congress have offered correctives to the existing "Godzilla" Supreme Court. Such as, requiring a supermajority or unanimity of Supreme Court Justices to declare a law unconstitutional; allowing Congress (or another legislative body) to overrule a decision on constitutionality; and removing the Congress-granted power of the Court to second-guess state courts on constitutional questions. A national referendum has also been suggested.

Congress need not retain two centuries of Congressional Acts uploading legislative powers into the judicial bailiwick. Perhaps Congress likes it this way, confident that any serious and effective reforms will be declared unconstitutional by the "branch" next door.

The ball is in our court, the people's court: the US Congress.

Corporate anthropologist Jane Anne Morris's Gaveling Down the Rabble *(Apex Press, 2008) is cited in an* amicus *brief filed in Citizens United v. FEC. See also, "Why a Green Future is 'Unconstitutional,'" (Spring, 2009 Synthesis/Regeneration). Morris (gaveljam@yahoo.com) is currently writing a book about the Supreme Court.*

CU v. FEC: Red Herring

Before running off to counter this recent Supreme Court decision we ought to sort out what this decision does and does not do. The case changes very little of our current situation. Look at any index: the role of money in elections, voting records that mirror campaign contribution patterns, the quality of debate, or the proportion of legislation clearly designed to benefit some corporate interest group. McCain-Feingold recalibrated, rearranged, and redecorated the loopholes used to determine how election money flows and is tallied. It did not eliminate that money, or the influence it reflects.

As this case was being heard in the fall of 2009, I noted the Supreme Court's false framing: "Must we limit speech in order to have free and fair elections? Or, must we accept corporate-dominated political debate in order to preserve free speech? This false dilemma disappears if we reject corporate personhood. Only if we pretend that corporations are "persons" under the Constitution, is limiting corporate "speech" a constitutional infringement."

Corporations function like retroviruses, taking over the rights and protections that we wrote for humans, and then using them against us, their human hosts. The opinion of the Court is chock full of paeans to the nobility and preciousness of unfettered free speech—of corporations. Rights we the people fought for—at the cost of much life, liberty, and happiness—are now used with great (and seemingly invisible) regularity to shield corporations from government "interference."

Rather than overstating the significance of the Citizens United decision, let's address the problem directly. Peek outside the democracy theme park, and repeat after me: Only if we pretend that corporations are "persons" under the Constitution, is limiting corporate "speech" a constitutional infringement, and kick that red herring out of the way.

This is an excerpt from "Court's Campaign Money Ruling Is a Red Herring," by Jane Anne Morris. See the entire piece at www.the alliancefordemocracy.org