



graphic: Matt Wuerker

Great Idea! But will Corporations Claim it's Illegal?

In *Justice Rising* (and many other places) we have read hundreds of creative ideas for how citizens can work locally to improve the environment, living conditions and local economies. In many cases these terrific, innovative ideas are "illegal" or "impossible" under current legal interpretations.

I may sound like a broken record, but let me repeat: corporate constitutional rights block many of these ideas from taking flight . . . or at least clip their wings. First off, many things cannot be done locally under our legal matrix. Even doing things at the state level is difficult and/or expensive.

Suppose your town wanted to support small local merchants and protect them from being underpriced by big box competitors. What are the possible means? Banning, taxing, restricting, limiting or otherwise "discriminating" against chain stores? You would be in violation of the 14th Amendment and the Interstate Commerce Clause. But what if your town wanted to encourage a big box store to build in your community by giving them a big, fat tax incentive? Isn't that "discrimination" against the local merchants? Apparently not. You would just be doing what most towns in America have done. The laws do not cut both ways. Apparently, you are free to discriminate against those who can't afford to sue you.

So the law says you can't discriminate to stop the building of a big box store, a vineyard, or cell tower. Could the voters in your town at least do something smaller like require labeling of genetically modified foods? Sorry, even that small step violates the corporation's right not to speak.

To encourage organic farming practices, Mendocino County, CA citizens voted to ban the growing of genetically modified organisms and

the measure is still in effect, but always one lawsuit away from danger. At any point our cash-strapped county could face challenges on 14th Amendment, Interstate Commerce and/or questions of jurisdiction. What would our supervisors do if faced with an expensive court defense?

Gutless local officials are a familiar problem. Citizens of Humboldt County, CA voted to pass a measure preventing corporations based outside their county from contributing money to local elections. It was county law until some corporations threatened to sue for their 1st Amendment rights, and the Board of Supervisors invalidated the law. The corporate lawyers didn't even need to go to court. The elected representatives of the people buckled immediately.

It's just as hard to expand something desirable as restrict something harmful. As the rest of the world experiments with hundreds of small cooperative banking models, in the US commercial banks scream about credit unions cutting into profits and the Government responds by throwing up roadblocks making it very difficult for alternatives to the big banking interests to emerge. The giant healthcare and pharmaceutical corporations lobby to prevent people forming groups to buy insurance and negotiate lower drug prices like big companies can.

Many of us dream of a day when all power is produced through wind or solar. But sustainable energy is a nightmare to oil companies and coal producers. They fight these good ideas with all the campaign bribes and lawsuits money can buy, maximizing their First Amendment right to lobby the government.

The concept of the commons "that the gifts of nature are for all life to share" strikes at the capitalist heart. If your community wants to give rights to an ecosystem, prepare for a battle. The takings clause of the Fifth Amendment (where a regulation is considered to be "taking" of private property for public good without just compensation) is a popular corporate weapon for these sorts of environmental disputes.

The Community Environmental Legal Defense Fund and others have found that before they could help local communities stop harms like bottled water grabs, factory hog farms, or the spreading of toxic sludge, they had to remove corporate claims to rights in the constitution. We are finding out now that good ideas often face these same barriers. Corporate rule must end before we can fully realize our green future.

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