2014

Free Speech For People & Harvard Law School

Advancing a New Jurisprudence for American Self-Government and Democracy

A legal symposium co-sponsored by Harvard Law School and Free Speech For People

November 7, 2014

Wasserstein 2036 (symposium)

Wasserstein 2012 (keynote)

Symposium materials as of September 17, 2014

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3. Participants biographies
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Symposium Participants

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John Bonifaz	Free Speech For People
Ben Clements	Free Speech For People
Jeff Clements	Free Speech For People
John Coates	Harvard Law School
Caroline Mala Corbin	University of Miami, School of Law
Ron Fein	Free Speech For People
Kent Greenfield	Boston College Law School
Deborah Hellman	University of Virginia, School of Law
Robert Jackson	Columbia Law School
Thomas Joo	UC Davis, School of Law
Lawrence Lessig	Harvard Law School
Dean Martha Minow	Harvard Law School
Tamara Piety	The University of Tulsa, School of Law
Jedediah Purdy	Duke University, School of Law
Jennifer Taub	Vermont Law School
The Hon. Jon Tester	United States Senate
Ciara Torres-Spelliscy	Stetson Law
Laurence Tribe	Harvard Law School

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AGENDA (in planning, as of September 17, 2014)

November 6, 2014

Pre-Symposium Dinner [Location TBD]	6:00 – 8:00 PM

November 7, 2014

Continental breakfast available (WCC 2036)	8:30 AM
Introduction (John Coates, Martha Minow, Jeff Clements) (WCC 2036)	9:00 – 9:30 AM
First panel: Corporations and the First Amendment (WCC 2036)	9:30 – 10:30 AM
Panelists: Caroline Corbin, Ron Fein, Thomas Joo, Tamara Piety.	
Coffee Break (WCC 2036)	10:30 – 10:45 AM
Second panel: Constitutional Dimensions of Corporate Law (WCC 2036)	10:45 – 11:45 AM
Panelists: John Coates, Rob Jackson, Jennifer Taub, and Kent Greenfield.	
Lunch (WCC 2036)	Noon to 1:00 PM
Keynote: A Conversation with Senator Jon Tester (WCC 2012)	1:00 – 2:00 PM
Third panel: Money in Politics and Democracy (WCC 2036)	2:15 – 3:15 PM
Panelists: Mark Alexander (invited), John Bonifaz, Larry Lessig, Ciara Torres-Spelliscy	
Coffee Break (WCC 3036)	3:15 to 3:30 PM
Fourth panel: Beyond *Citizens United* and *Hobby Lobby* (WCC 2036)	3:30 – 4:30 PM
Panelists: Ben Clements, Deborah Hellman, Jed Purdy, Larry Tribe	
Closing remarks (Jeff Clements)	4:30 – 4:45 PM
End	4:45 PM
Informal drinks (WCC 2036)	4:45 PM – 5:30 PM

Mark Alexander, Seton Hall Law
Professor of Law

Mark Alexander is a law professor at Seton Hall University, specializing in Constitutional Law and the intersection of Law and Politics. Professor Alexander writes and teaches in the areas of Constitutional Law, Law & Politics, Criminal Procedure, and The First Amendment. His scholarship focuses on the intersection of law, politics and government and on free speech issues. Alexander is active in politics and government: he was Senior Advisor to Barack Obama, having worked on the Obama presidential campaign since January 2007. As Policy Director, he developed Senator Obama's signature policies, built a network of policy experts and provided overall strategic guidance. Alexander also served as New Jersey State Director in the primaries, running all operations in his home state. In addition, Alexander worked on a wide variety of legal matters and political work and routinely appeared as a surrogate for the campaign. He also served on the Presidential Transition Team, reviewing the Federal Election Commission, as part of the Justice and Civil Rights Team. Professor Alexander was General Counsel to Cory Booker and the Booker Team in the 2006 Newark Municipal elections and then for Newark in Transition, as Mayor Booker moved to assume the office. Other political work includes serving as Issues Director for the Bill Bradley for President Campaign in 1999-2000. He also worked for U.S. Senators Edward Kennedy and Howard Metzenbaum, and he served a two-year term as an elected official in the Washington, D.C. government. Alexander also has significant international experience, including a year in Spain on a Fulbright Scholarship, where he taught American law and politics. In addition he has taught in the Seton Hall Law-in-Italy program. He is also a fellow of the U.S.-Japan Leadership Program. Alexander clerked for Chief Judge Thelton Henderson of the United States District Court for the Northern District of California and was a litigator with Gibson, Dunn & Crutcher in San Francisco before joining the Seton Hall Law School faculty in 1996. Professor Alexander was the 1996-1997 Student Bar Association Professor of the Year, and he has been nominated for the award on numerous other occasions. He received his B.A. and J.D. from Yale University. In the spring 2003 semester, Prof. Alexander returned to Yale Law School as a Visiting Scholar.

John Bonifaz, Free Speech For People
Co-Founder & President

John Bonifaz is the Co-Founder and President of Free Speech For People. Mr. Bonifaz previously served as the Executive Director and then General Counsel of the National Voting Rights Institute, an organization he founded in 1994, and as the Legal Director of Voter Action, a national election integrity organization. Mr. Bonifaz has been at the forefront of key voting rights battles in the country for more than two decades: pioneering a series of court challenges, applying political equality principles, that have helped to redefine the campaign finance question as a basic voting rights issue of our time; initiating and leading a legal strategy for revisiting *Buckley v. Valeo* in the courts; leading the fight in the federal courts in Ohio for a recount of the 2004 presidential vote in that state; and prevailing in federal court in Pennsylvania on the eve of the 2008 election to ensure that Pennsylvania voters would receive emergency paper ballots when they faced long lines caused by voting machine breakdowns. In addition to his work in the field of voting rights and democracy advocacy, Mr. Bonifaz has also served as co-counsel in international human rights and environmental litigation, including litigation to hold the Chevron-Texaco oil company accountable for its widespread destruction of the Ecuadorian Amazon. Mr. Bonifaz is a 1992 cum laude graduate of Harvard Law School and a 1999 recipient of a MacArthur Foundation Fellowship.

Ben Clements, Free Speech For People
Board Member, Legal Committee Chair

Ben Clements is a Member of Free Speech For People's Board of Directors and the Chair of the Board's Legal Committee. Ben is a former federal prosecutor, and a former Chief Legal Counsel to Massachusetts Governor Deval Patrick, with substantial experience representing persons and entities in white collar criminal proceedings, state and federal enforcement proceedings, complex business litigation, and appeals. He also counsels and represents clients in connection with securities law, healthcare law, government ethics laws and regulations, government procurement law, and other matters relating to the state and federal governments. His clients have included business

executives and professionals, senior government officials, Fortune 500 companies, small businesses, non-profit institutions, and state and federal governments. In 2008, Mr. Clements served as the Chair of the Governor's Task Force on Public Integrity, a bi-partisan committee that led to landmark legislation to improve the state ethics and lobbying laws. He is a founder of Clements & Pineault, LLP in Boston. Mr. Clements graduated from Dartmouth College (1986, cum laude) and Cornell Law School (1989, summa cum laude).

Jeff Clements, Free Speech For People
Co-Founder & Board Chair

Jeff Clements is the Co-Founder and Chair of the Board of Free Speech for People. He is also the author of Corporations Are Not People (with a foreword by Bill Moyers), Berrett-Koehler, San Francisco, 2d ed., 2014. Jeff co-founded Free Speech For People in 2010, after representing several public interest organizations with a Supreme Court amicus brief in the *Citizens United* case. Jeff has served as Assistant Attorney General and Chief of the Public Protection Bureau in the Massachusetts Attorney General's Office. As Bureau Chief, he led more than 100 staff in the enforcement of environmental, healthcare, financial services, civil rights, antitrust and consumer protection laws. In private practice, Jeff has been a partner at Mintz Levin in Boston, and in his own firm. Jeff also has served in leadership capacities on numerous boards, including that of the Portland Water District, a public agency responsible for protecting and delivering safe drinking water and ensuring proper treatment of wastewater for 160,000 people; Friends of Casco Bay, an environmental organization he co-founded with others to protect and enhance stewardship of Maine's Casco Bay; and The Waldorf School in Lexington, Massachusetts. In 2012, Jeff co-founded Whaleback Partners LLC, which provides cost-effective capital to farmers and businesses engaged in local, sustainable agriculture. Jeff graduated with distinction in History and Government from Colby College in 1984, and magna cum laude from the Cornell Law School in 1988.

John Coates, Harvard Law School
John F. Cogan, Jr. Professor of Law and Economics

John Coates is the John F. Cogan, Jr. Professor of Law and Economics at Harvard Law School, and Research Director of the Program on the Legal Profession. Before joining Harvard, he was a partner at Wachtell, Lipton, Rosen & Katz, specializing in financial institutions and M&A. He has testified before Congress and provided consulting services to the U.S. Department of Justice, the U.S. Department of Treasury, the New York Stock Exchange, and participants in the financial markets, including individuals, mutual funds, hedge funds, investment banks, commercial banks, and private equity funds. In addition, he served as independent distribution consultant for the Securities and Exchange Commission in two "Fair Fund" distributions to investors - including one of the first distributions (of $50 million relating to an enforcement action regarding payment for order flow), and one of the largest distributions (of $306 million relating to enforcement actions regarding market timing and late trading). He has also served as an independent representative of individual and institutional clients of institutional trustees and money managers.

Caroline Mala Corbin,
University of Miami, School of Law
Professor of Law

Caroline Mala Corbin is Professor of Law at the University of Miami School of Law. She teaches courses on the U.S. Constitution, the First Amendment, and feminism and the First Amendment. Her scholarship focuses on the First Amendment's speech and religion clauses, particularly their intersection with equality issues. Professor Corbin's articles have been published in the New York University Law Review, UCLA Law Review, Northwestern University Law Review, Boston University Law Review, and Iowa Law Review, among others. Professor Corbin joined the Miami law faculty in 2008 after completing a postdoctoral research fellowship

at Columbia Law School. Before her fellowship, she litigated civil rights cases as a pro bono fellow at Sullivan & Cromwell LLP and as an attorney at the ACLU Reproductive Freedom Project. She also clerked for the Hon. M. Blane Michael of the United States Court of Appeals for the Fourth Circuit. Professor Corbin holds a B.A. from Harvard University and a J.D. from Columbia Law School. She was a James Kent Scholar while at Columbia Law School, where she also won the Pauline Berman Heller Prize and the James A. Elkins Prize for Constitutional Law.

Ron Fein, Free Speech For People
Legal Director

Ron Fein is the Legal Director for Free Speech for People. Mr. Fein previously served as Assistant Regional Counsel in the United States Environmental Protection Agency's New England office, where he received the EPA's National Gold Medal for Exceptional Service, the National Notable Achievement Award, and several other awards. Mr. Fein supervised the office's Clean Air Act practice and won several major cases, including a first-in-nation air quality permit for an offshore wind farm and a nationally recognized settlement requiring a power plant to virtually eliminate its use of a local river. Mr. Fein previously clerked for the Honorable Kermit Lipez of the United States Court of Appeals for the First Circuit and the Honorable Douglas Woodlock of the United States District Court for the District of Massachusetts. He has also worked as an independent consultant to non-profits, as deputy campaign manager of a congressional campaign, and in software development, for which he was awarded nine patents. Mr. Fein graduated Order of the Coif from Stanford Law School and *summa cum laude* from Harvard College.

Kent Greenfield, Boston College Law School
Professor and Law School Fund Research Scholar

Kent Greenfield is Professor of Law and Law Fund Research Scholar at Boston College Law School, where he teaches and writes in the areas of business law, constitutional law, decision making theory, legal theory, and economic analysis of law. He is the past Chair of the Section on Business Associations of the American Association of Law Schools. In addition, he is the author of the books "The Myth of Choice," published in 2011 from Yale University Press, and "The Failure of Corporate Law" published by University of Chicago Press in 2007. He is currently working on a book about the constitutional status of corporations, to be published by Yale University Press. Greenfield is a graduate of the University of Chicago Law School, where he graduated with honors and was awarded membership into the Order of the Coif. He also served as Topics and Comments Editor of the University of Chicago Law Review. He received an A.B., with highest honors, from Brown University, where he studied economics and history. Before joining academia, Greenfield worked for Covington & Burling in Washington, D.C., and clerked for Judge Levin Campbell on the U.S, Court of Appeals for the First Circuit and for Supreme Court Justice David H. Souter.

Deborah Hellman
University of Virginia, School of Law
F. D. G. Ribble Professor of Law

Deborah Hellman joined the Law School in 2012 after serving on the faculty of the University of Maryland School of Law since 1994. Hellman's work focuses on discrimination and equality. She is the author of *When is Discrimination Wrong?* (Harvard Univ. Press, 2008) and co-editor of *The Philosophical Foundations of Discrimination Law* (Oxford Univ. Press, 2013). In addition, she writes about the constitutionality of campaign finance laws and the obligations of professional roles, especially in the context of clinical medical research. She teaches contracts, constitutional law and classes related to the theory of equal protection and the relationship between money and rights.Hellman was a fellow at the Woodrow Wilson International Center for Scholars (2005-06) and the Eugene P. Beard Faculty Fellow in Ethics at the Edmond J. Safra Center for Ethics at Harvard University (2004-05). She was awarded a National Endowment for the Humanities Fellowship for University Teachers in 1999 and was a visiting professor at the University of Pennsylvania Law School in 2007-08 and at the University of Virginia in the fall of 2011. Professor Hellman received her B.A. from Dartmouth College in 1985, her M.A. from Columbia University in 1987 and her J.D. from Harvard Law School in 1991.

Robert Jackson, Columbia Law School
Professor of Law; Co-Director, Ira M. Millstein Center

Robert J. Jackson, Jr. is Associate Professor of Law, Milton Handler Fellow, and Co-Director of the Ira M. Millstein Center for Global Markets and Corporate Ownership at Columbia Law School, where his research emphasizes empirical study of executive compensation and corporate governance matters. Before joining the faculty in 2010, Professor Jackson served as an advisor to senior officials at the Department of the Treasury and in the Office of the Special Master for TARP Executive Compensation. Before that, Professor Jackson practiced in the Executive Compensation Department of Wachtell, Lipton, Rosen and Katz. Professor Jackson has testified about his work before the U.S. Senate, and his research has been the subject of rulemaking commentary before several federal agencies, including the Federal Reserve and the Securities and Exchange Commission. His most recent projects include the first empirical study of incentives throughout the managerial hierarchy of a large investment bank (Stock Unloading and Banker Incentives, 112 Colum. L. Rev. 951 (2012)) and the first comprehensive study of CEO pay in firms owned by private equity (Private Equity and Executive Compensation, 60 U.C.L.A. L. Rev. 638 (2013)). Professor Jackson has also written about corporate spending on politics (Corporate Political Speech: Who Decides?, 124 Harv. L. Rev. 83 (2010) (with Lucian A. Bebchuk)), and co-chaired a group of legal academics that has petitioned the SEC to make rules requiring U.S. public companies to disclose such spending. In 2012, Columbia students honored Professor Jackson with the Willis L.M. Reese Prize for Excellence in Teaching. Also in 2012, Professor Jackson moderated a Fred Friendly Seminar on Financial Innovation in conjunction with Columbia Business School.

Thomas Joo, UC Davis, School of Law
Professor of Law

Thomas Joo is a Professor of Law at the University of California, Davis, School of Law, specializing in corporate governance, contract law, white collar crime, and critical race theory. He is a member of the American Law Institute (ALI) and a member of the Legal Advisory Committee of Free Speech for People. Professor Joo has also served as chair of the Section on Contracts of the Association of American Law Schools (AALS). He is the editor of the book *Corporate Governance: Law, Theory and Policy* (Carolina Academic Press, 2d ed. 2014). Prior to joining the UC Davis faculty, Professor Joo was a clerk in the chambers of the Honorable Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit and an associate at Cleary, Gottlieb, Steen & Hamilton in New York. Professor Joo received his B.A. *summa cum laude* from Harvard College and his J.D. *magna cum laude* from Harvard Law School.

Lawrence Lessig, Harvard Law School
Roy L. Furman Professor of Law

Lawrence Lessig is the Roy L. Furman Professor of Law at Harvard Law School, and Director of the Edmond J. Safra Center for Ethics at Harvard University. Prior to rejoining the Harvard faculty, Lessig was a professor at Stanford Law School, where he founded the school's Center for Internet and Society, and at the University of Chicago. He clerked for Judge Richard Posner on the 7th Circuit Court of Appeals and Justice Antonin Scalia on the United States Supreme Court. Lessig serves on the Board of Creative Commons, MAPLight, Brave New Film Foundation, The American Academy, Berlin, AXA Research Fund and iCommons.org, and is on the advisory board of the Sunlight Foundation. He is a Member of the American Academy of Arts and Sciences, and the American Philosophical Association, and has received numerous awards, including the Free Software Foundation's Freedom Award, Fastcase 50 Award and being named one of Scientific American's Top 50 Visionaries. Lessig holds a BA in economics and a BS in management from the University of Pennsylvania, an MA in philosophy from Cambridge, and a JD from Yale.

Martha Minow, Harvard Law School
Dean

Martha Minow, the Morgan and Helen Chu Dean and Professor of Law, has taught at Harvard Law School since 1981, where her courses include civil procedure, constitutional law, family law, international criminal justice, jurisprudence, law and education, nonprofit organizations, and the public law workshop. An expert in human rights and advocacy for members of racial and religious minorities and for women, children, and persons with disabilities, she also writes and teaches about privatization, military justice, and ethnic and religious conflict. Besides her many scholarly articles published in journals of law, history, and philosophy, her books include In Brown's Wake: Legacies of America's Constitutional Landmark (2010); Government by Contract (co-edited, 2009); Just Schools: Pursuing Equality in Societies of Difference (co-edited, 2008); Breaking the Cycles of Hatred: Memory, Law and Repair (edited by Nancy Rosenblum with commentary by other authors, 2003); Partners, Not Rivals: Privatization and the Public Good **(**2002); Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies **(**co-edited 2002**);** Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence (1998**);** Not Only for Myself: Identity, Politics and Law **(**1997); Law Stories **(co-**edited 1996**);** Narrative, Violence and the Law: The Essays of Robert M. Cover **(**co-edited 1992**);** and Making All the Difference: Inclusion, Exclusion, and American Law (1990). She is the co-editor of two law school casebooks, Civil Procedure: Doctrine, Practice and Context (3rd**.** edition 2008) and Women and the Law (4th edition 2007), and a reader**,** Family Matters: Readings in Family Lives and the Law **(**1993).She served on the Independent International Commission Kosovo and helped to launch Imagine Co-existence, a program of the U.N. High Commissioner for Refugees, to promote peaceful development in post-conflict societies. Her five-year partnership with the federal Department of Education and the Center for Applied Special Technology worked to increase access to the curriculum for students with disabilities and resulted in both legislative initiatives and a voluntary national standard opening access to curricular materials for individuals with disabilities. She has worked on the Divided Cities initiative which is building an alliance of global cities dealing with ethnic, religious, or political divisions.Her honors include: the Gold Medal for Outstanding Contribution to Public Discourse, awarded by the College Historical Society of Trinity College, Dublin, in recognition of efforts to promote discourse and intellectualism on a world stage; the Sacks-Freund Teaching Award, awarded by the Harvard Law School graduating class of 2005; the Holocaust Center Award, 2006; and Honorary Doctorates from Northwestern University (Law), the Jewish Theological Seminary (Law), Dominican University (Humane Letters), Hebrew College (Humane Letters), McGill University (Law), the University of Toronto (Law), and Wheelock College (Education).In August 2009, President Barack Obama nominated Dean Minow to the board of the Legal Services Corporation, a bi-partisan, government-sponsored organization that provides civil legal assistance to low-income Americans. The U.S. Senate confirmed her appointment on March 19, 2010 and she now serves as Vice-Chair. She co-chaired its Pro Bono Task Force. She previously chaired the board of directors for the Revson Foundation (New York) and now serves on the boards of the MacArthur Foundation, the Covenant Foundation, and other nonprofit organizations. She is a former member of the board of the Bazelon Center for Mental Health Law, the Iranian Human Rights Documentation Center, and former chair of the Scholar's Board of Facing History and Ourselves. A fellow of the American Academy of Arts & Sciences since 1992, Minow has also been a senior fellow of Harvard's Society of Fellows, a member of Harvard University Press Board of Syndics, a senior fellow and twice acting director of what is now Harvard's Safra Foundation Center on Ethics, a fellow of the American Bar Foundation and a Fellow of the American Philosophical Society. She has delivered more than 70 named or endowed lectures and keynote addresses. Minow co-chaired the Law School's curricular reform committee from 2003 to 2006, an effort that led to significant innovation in the first-year curriculum as well as new programs of study for second- and third-year J.D. students.After completing her undergraduate studies at the University of Michigan, Minow received a master's degree in education from Harvard and her law degree from Yale. She clerked for Judge David Bazelon of the United States Court of Appeals for the D.C. Circuit and then for Justice Thurgood Marshall of the Supreme Court of the United States. She joined the Harvard Law faculty as an assistant professor in 1981, was promoted to professor in 1986, was named the William Henry Bloomberg Professor of Law in 2003, became the Jeremiah Smith Jr., Professor of Law in 2005, and became the inaugural Morgan and Helen Chu Dean and Professor in 2013. She is also a lecturer in the Harvard Graduate School of Education. She enjoys watching and talking about movies and keeping in touch with current and former students.

Tamara Piety,The University of Tulsa, School of Law
Phyllis Hurley Frey Professor of Law

Tamara Piety writes about the legal treatment of commercial and corporate speech. She is the author of *Brandishing the First Amendment* (U. Michigan Press, 2012) which dealt with the convergence of the commercial and corporate speech doctrines and the problems that convergence raises for a wide range of regulatory efforts. She has published and presented extensively, both here and abroad, on the issue of commercial and corporate speech. In addition to Brandishing the First Amendment her published work has appeared in the *Texas Law Review*, *Alabama Law Review*, *Michigan Law Review*, and *Case Western Reserve Law Review* and many others. Professor Piety is a former litigator who teaches litigation-related subjects including, Evidence, Scientific Evidence and Law and Mind Sciences. Piety earned her bachelor's degree in economics from Florida International University in 1985; her J.D., *magna cum laude*, from the University of Miami in 1991 where she was an Article and Comments Editor for the *University of Miami Law Review* and was awarded Order of the Coif. She received her LL.M. from Harvard Law School in 2000 where she was the Executive Editor of the *Harvard Women's Law Journal*. While at Miami she was one of 10 students invited to participate in a seminar on constitutional law with the late Justice William J. Brennan. She also served as judicial clerk for the Honorable Peter T. Fay of the United States Court of Appeals for the Eleventh Circuit and as an interim clerk for the Honorable Irving L. Goldberg of the United States Court of Appeals for the Fifth Circuit. Prior to joining the faculty at the University of Tulsa she was a Teaching Fellow at Stanford Law School. She has also been a Visiting Professor at Florida State University. Professor Piety will be a Senior Research Scholar in Law at Yale Law School in 2015.

Jedediah Purdy, Duke University, School of Law
Robinson O. Everett Professor of Law

Jedediah Purdy teaches constitutional, environmental, and property law and writes in all of these areas. He also teaches legal theory and writes on issues at the intersection of law and social and political thought. He is the author of four books, including a trilogy on American political identity, which concluded with *A Tolerable Anarchy* (2009), all from Knopf. *The Meaning of Property* appeared in 2010 from Yale University Press. He has published many essays in publications including *The Atlantic Monthly*, *The New York Times* Op Ed Page and Book Review, *Die Zeit*, and *Democracy Journal*, and his legal scholarship has appeared in the *Yale Law Journal*, *University of Chicago Law Review*, *Duke Law Journal*, *Cornell Law Review*, and *Harvard Environmental Law Review*, among others. He is now at work on *After Nature: A Politics for the Anthropocene*, under contract with Harvard University Press. Purdy graduated from Harvard College, *summa cum laude*, with an A.B. in Social Studies, and received his J.D. from Yale Law School. He clerked for Judge Pierre N. Leval of the Second U.S. Circuit Court of Appeals in New York City and has been a fellow at the Berkman Center for Internet and Society at Harvard Law School, an ethics fellow at Harvard University, and a visiting professor at Yale Law School, Harvard Law School, Virginia Law School, and the Georgetown University Law Center. Purdy has co-taught with faculty from around the university, including Laura Edwards (History), Michael Hardt (Literature), and President Richard Brodhead.

Jennifer Taub, Vermont Law School
Professor of Law

Jennifer Taub is the author of financial crisis book *Other People's Houses.* Formerly an Associate General Counsel at Fidelity Investments, Taub's research and writing focuses on corporate governance and financial market regulation. Taub is a graduate of Harvard Law School and Yale College and a professor of law at Vermont Law School, where she teaches Contracts, Corporations, Securities Regulation, and White Collar Crime. She resides in Northampton, Massachusetts. Taub has written extensively on financial reform, attracting speaking engagements at conferences, colloquia, and lectures in the U.S. and overseas. These include events sponsored by the following: Better Markets and George Washington University Law School, Center for Law, Economics & Finance (2013); The Chinese University of Hong Kong, Centre for Financial Regulation and Economic Development (2013); The AFL-CIO, Friedrich Ebert Stiftung, and Macroeconomic Policy Institute (2013); The Rockefeller

Center at Dartmouth College (2012); The North American Securities Administrators Association (2012); Corporate Law Center at the University of Cincinnati Law School (2012); Boston College Law School (2012); National Association for Business Economics (2011); The Roosevelt Institute (2010); Fordham Law School (2010), University at Buffalo Law School (2010); The Political Economy Workshop, UMass Amherst (2010); and The Elfenworks Center for Fiduciary Capitalism at St. Mary's College (2009).In addition to Other People's Houses, published writing related to the financial crisis includes the chapters, "The Sophisticated Investor and the Global Financial Crisis," for *Corporate Governance Failures: The Role of Institutional Investors in the Global Financial Crisis* and "What We Don't Talk About When We Talk About Banking," for the Oxford University Press *Handbook of the Political Economy of Financial Crises*. Taub's writing has appeared on a variety of blogs including The N.Y. Times Dealbook, The Baseline Scenario, The Pareto Commons, The Race to the Bottom, and the Big Picture. She has been interviewed for print, radio and video media including by the Wall Street Journal/MarketWatch, Bloomberg, ABC News, CBSMoneyWatch, MarketPlace Radio, Vermont Public Radio, WCAXTV, the Real News Network, and HuffingtonPost LIVE. Taub's corporate governance work often focuses on the role of institutional investors. Her article "Able but Not Willing: The Failure of Mutual Fund Advisers to Advocate for Shareholders' Rights" was published in 2009 in the *Journal of Corporation Law*. Her article, "Managers in the Middle: Seeing and Sanctioning Political Spending after Citizens United" was presented at the Brennan Center for Justice and published in 2012 in the *NYU Journal of Legislation and Public Policy*. Taub is a member of the Free Speech for People Legal Advisory Committee and a member of the education committee of the Sustainable Accounting Standards Board.

The Hon. Jon Tester
U.S. Senator for Montana

Senator Jon Tester is a third-generation Montana farmer, a proud grandfather and a former school teacher who has deep roots in hard work, responsibility and accountability. Senator Tester is the lead sponsor in the U.S. Senate of S.J. Res. 18, the People's Rights Amendment, which would overturn the doctrine of corporate constitutional rights. Jon firmly believes that the growing influence of corporations in American politics, policy, and in people's private lives is changing the balance in America to favor corporations over citizens. Jon and his wife Sharla still farm the same land near the town of Big Sandy, Montana that was homesteaded by Jon's grandparents in 1912. Jon's parents believed public education and family agriculture are the cornerstones of democracy—and those values had a tremendous role in shaping Jon's leadership. After earning a degree in music from the College of Great Falls, Jon took over the Tester farm in 1978. He also taught music at F.E. Miley Elementary and eventually was elected to the Big Sandy School Board. Fired up by the Montana Legislature's decision to deregulate Montana's power industry (resulting in higher power costs), Jon ran for and was elected to the Montana Senate in 1998. In 2005, Jon's colleagues chose him to serve as Montana Senate President. The people of Montana elected Jon to the U.S. Senate in 2006 and again in 2012. Jon believes in holding himself accountable to the highest standards possible, and he has improved transparency at all levels of government. In fact, Jon was the first senator to post his daily public schedule online and is the lead sponsor of a bill to require all U.S. Senate candidates to file their campaign finance reports electronically. In the U.S. Senate, Jon is an outspoken voice for rural America. He is an advocate for small businesses and has hosted numerous Small Business Opportunity Workshops across Montana to serve thousands of business owners and entrepreneurs. He is a champion of responsible energy development, sportsmen's issues, clean air and water, Indian nations, women's access to care, and quality health care for all of America's veterans.
In the Senate, Jon chairs the Committee on Indian Affairs and serves on the Veterans' Affairs, Homeland Security, Banking and Appropriations Committees.

Ciara Torres-Spelliscy, Stetson Law
Associate Professor of Law

Ciara Torres-Spelliscy is an associate professor, teaching courses in Election Law, Corporate Governance, Business Entities, and Constitutional Law. Prior to joining Stetson's faculty, Torres-Spelliscy was counsel in the Democracy Program of the Brennan

Center for Justice at NYU School of Law where she provided guidance on the issues of money in politics and the judiciary to state and federal lawmakers. She was an associate at Arnold & Porter LLP and a staffer for Senator Richard Durbin. Professor Torres-Spelliscy has testified before Congress, and state and local legislative bodies as an expert on campaign finance reform. She has also helped draft legislation and Supreme Court briefs. She is the editor of the 2010 edition of the Brennan Center's campaign finance treatise, "Writing Reform: A Guide to Drafting State and Local Campaign Finance Laws." She researches and speaks publicly on campaign finance law as well as judicial selection. She has spoken at symposia at 21 universities around the nation. She presented at the 2013 Annual Convention of the Association of American Law Schools (AALS) and at the 2014 Annual Convention of the American Constitution Society. As well as publishing in law reviews, such as the *University of San Francisco Law Review* and the *NYU Journal of Legislation and Public Policy*, Professor Torres-Spelliscy has been published in the *New York Times, New York Law Journal, Slate, L.A. Times, U.S. News and World Report, Boston Review, Roll Call, Business Week, Forbes, The Atlantic, USA Today, Business Ethics Magazine, San Francisco Chronicle, The Hill, Huffington Post, The Root.com, Judicature, Salon.com, Tampa Bay Times, CNN.com,* and the *ABA Judges Journal*. She has also been quoted by the media in *The Economist, The New York Times, Mother Jones, Newsweek on Air, SCOTUS Blog, The National Journal, USA Today, L.A. Times, Boston Globe, NBC.com, WMNF, Sirius Radio, National Public Radio, Fox, Voice America, CSPAN, DNA TV,* and *NY1*. In 2014, Stetson University College of Law awarded Professor Torres-Spelliscy the Dickerson-Brown award for Excellence in Faculty Scholarship. In 2013, Professor Torres-Spelliscy was named as a member of the Lawyers of Color's "50 Under 50" list of minority law professors making an impact in legal education. She is a member of the Board of Directors of the Mertz Gilmore Foundation, a member of the Board of Directors of the National Institute on Money in State Politics, and a Brennan Center Fellow.

Laurence Tribe, Harvard Law School
Carl M. Loeb University Professor

Laurence H. Tribe, the Carl M. Loeb University Professor and Professor of Constitutional Law at Harvard, has taught at its Law School since 1968 and was voted the best professor by the graduating class of 2000. The title "University Professor" is Harvard's highest academic honor, awarded to just a handful of professors at any given time and to fewer than 75 professors in all of Harvard University's history. Born in China to Russian Jewish parents, Tribe entered Harvard in 1958 at 16; graduated summa cum laude in Mathematics (1962) and magna cum laude in Law (1966); clerked for the California and U.S. Supreme Courts(1966-68); received tenure at 30; was elected to the American Academy of Arts and Sciences at 38 and to the American Philosophical Society in 2010; helped write the constitutions of South Africa, the Czech Republic, and the Marshall Islands; has received eleven honorary degrees, most recently a degree honoris causa from the Government of Mexico in March 2011 that was never before awarded to an American and an honorary D. Litt. From Columbia University; has prevailed in three-fifths of the many appellate cases he has argued (including 35 in the U.S. Supreme Court); was appointed in 2010 by President Obama and Attorney General Holder to serve as the first Senior Counselor for Access to Justice; and has written 115 books and articles, including his treatise, American Constitutional Law, cited more than any other legal text since 1950. Former Solicitor General Erwin Griswold wrote: "[N]o book, and no lawyer not on the [Supreme] Court, has ever had a greater influence on the development of American constitutional law," and the Northwestern Law Review opined that no-one else "in American history has… simultaneously achieved Tribe's preeminence… as a practitioner and… scholar of constitutional law."

Symposium Location(s):

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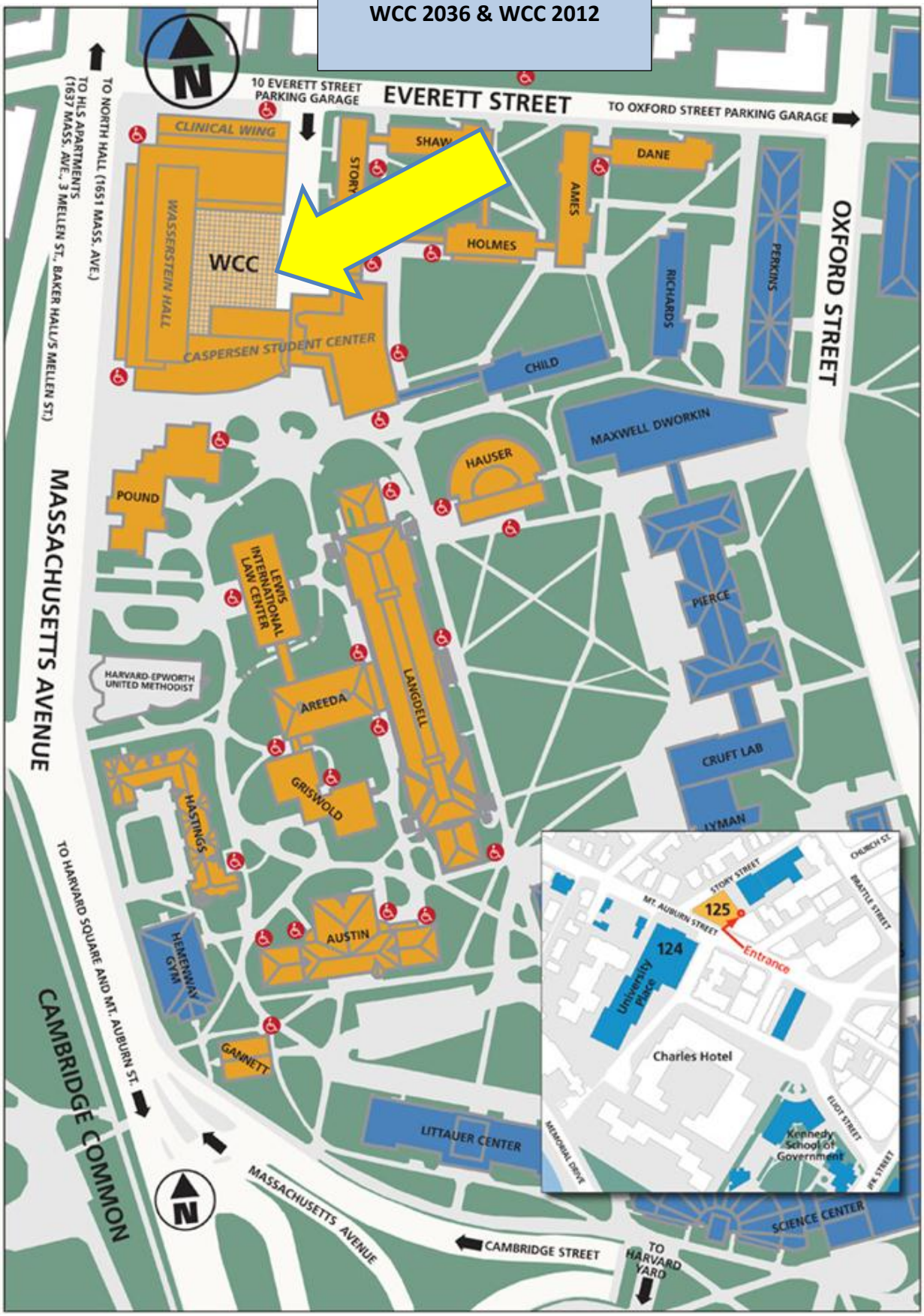

Advancing a New Jurisprudence for American Self-Government and Democracy

A legal symposium co-sponsored by Harvard Law School and Free Speech For People

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Background Reading

I. Introduction

The Supreme Court's widely-criticized decision in *Citizens United v. FEC* invalidated a federal ban on corporate expenditures in federal election campaigns.[1] *Citizens United* brought together two controversial lines of cases, concerning political spending and corporate constitutional rights respectively. The decision provoked widespread public outcry and critical scholarly commentary for the Court's holding that independent political expenditures cannot be limited because they cannot "corrupt," and its rejection of any constitutional distinction between corporations and natural persons.

Citizens United brings together two areas of law: campaign finance and corporate constitutional rights. In the field of campaign finance, *Citizens United* reversed decades of precedent.[2] But the seeds of *Citizens United* were planted in *Buckley v. Valeo*, which treated campaign money as protected "speech" in the first place.[3] In the field of corporate constitutional rights, *Citizens United* represents the culmination of a trend, which began in the 1880s[4] but dormant until the 1970s,[5] of extending to corporate entities the rights guaranteed to individuals in the Constitution.

Even before *Citizens United*, these two lines of cases had been targets of criticism. *Citizens United*, however, brought both issues to the forefront. In the scholarly literature, the Court's campaign finance analysis has been criticized as based on a cramped conception of the public interest in reining in campaign spending, supplemented with an unrealistic, pollyannish view of the real-world effects of "independent" campaign spending;[6] its corporate personality analysis has been criticized as based on an unreflective, poorly-theorized conception of the corporation.[7]

In response to *Citizens United*, constitutional amendment bills have been introduced in Congress, aimed at campaign finance and corporate constitutional rights. The leading campaign finance amendment would grant Congress and the states the ability to limit the amounts of money that may be contributed and spent in political campaigns, reversing not just *Citizens United* but also *Buckley*. The leading corporate constitutional rights amendment would clarify that the rights

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[1] 558 U.S. 310 (2010).
[2] *See* 558 U.S. at 365.
[3] 424 U.S. 1 (1976) (per curiam).
[4] *See, e.g., Santa Clara County v. S. Pac. R. Co*., 118 U.S. 394 (1886).
[5] *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).
[6] *See, e.g.,* Deborah Hellman, *Defining Corruption and Constitutionalizing Democracy,* 111 Mich. L. Rev. 1385, 1413 (2013); Michael S. Kang, *After Citizens United*, 44 Ind. L. Rev. 243, 244 (2010).

[7] *See, e.g.,* Joseph F. Morrissey, *A Contractarian Critique of Citizens United*, 15 U. Pa. J. Const. L. 765, 830 (2013); Anne Tucker, *Flawed Assumptions: A Corporate Law Analysis of Free Speech and Corporate Personhood in Citizens United*, 61 Case W. Res. L. Rev. 497, 531 (2010).

enumerated in the Constitution belong to natural persons, not corporations or similar artificial entities created by law, reversing not just *Citizens United*, but all cases under which corporations were able to achieve invalidation of legislation by claiming constitutional rights.

It is sometimes asserted that it would be practically impossible for such amendments to be adopted, but with 80+% of the public supporting the goals that motivate them, with 16 states having already adopted resolutions supporting either or both (by the legislature or directly by voters through ballot measures), and with a Supreme Court that seems more likely to extend the reach of *Citizens United* than to curtail it, the practical political possibilities are far from settled. If adopted, such amendments would have implications for a number of areas of law not directly involved in *Citizens United*. Over time, moreover, the composition of the Supreme Court will change, making similar constitutional changes via decision possible. (*Citizens United*, after all, reversed two prior Supreme Court precedents.[8]) Even under the present Constitution, then, efforts to rethink both campaign finance and the constitutional "personality" of corporations are of clear practical and theoretical importance.

This symposium is designed to advance such analysis by:

- critically examining the foundations for the Court's current jurisprudence in campaign finance and corporate constitutional personality;
- analyzing how the Constitution would function without these judicially imposed limits on democratic legislation, including any potential unintended consequences or complications and potential workarounds;
- examining how traditional First and Fourteenth Amendment doctrine would work in the wake of these amendments;
- examining non-constitutional legal principles (e.g., shareholder standing; rules of corporate and securities law and governance; third-party standing) and how they might change if corporations were "de-constitutionalized," as well as how they might change if the constitutional amendments are not passed but sustained political majorities remain in favor of accomplishing their goals; and
- laying a foundation for future jurisprudence that allows the public to pass laws that control spending in elections without enabling invidious discrimination or entrenching incumbents, and in a manner that fully protects the rights of all natural persons without ascribing constitutional rights to corporations.

II. Campaign finance

The Supreme Court's political spending cases, starting with *Buckley* and continuing up through this spring's *McCutcheon v. FEC*,[9] have approached political spending as a form of speech, (rather than as a tool for amplification of speech or influence of elected officials), which can be regulated only to prevent outright bribery ("*quid pro quo*" corruption) or (perhaps) the appearance thereof. The authors of these decisions have rejected theories of campaign finance based on providing a "level playing field" for candidates, avoiding distortion of the political marketplace, or ensuring equality of influence among voters, and progressively narrowed the exception aimed at deterring corruption.

Since *Citizens United*, the Court has further dismantled state and federal campaign finance regulatory infrastructure. In *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*,[10] the Court struck down a state public campaign financing system that placed no limits on any political expenditures whatsoever, but simply provided that, if a publicly financed candidate ran against a privately-financed candidate, the publicly financed candidate would receive extra public funds to

[8] *McConnell v. FEC*, 540 U.S. 93, (2003); *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990).
[9] 134 S. Ct. 1434 (2014).
[10] 131 S. Ct. 2806 (2011).

match money spent by the private opponent or independent expenditure groups spending on the private opponent's behalf. Earlier this year, in *McCutcheon*, the Court limited the allowable government interest in regulating political contributions to "*quid pro quo* corruption," and invalidated aggregate contribution limits.

The Supreme Court's campaign finance jurisprudence (both pre- and post-*Citizens United*) has been criticized on several grounds, including:

- Treating money (campaign contributions and expenditures) as "speech" under the First Amendment, rather than a form of property with the ability to amplify speech and influence elected officials, thereby subjecting contribution and expenditure limits to levels of judicial scrutiny reserved for speech itself.

- Rejecting any grounds besides preventing "*quid pro quo* corruption" (or possibly the appearance thereof) as a legitimate basis for controlling campaign spending — not preventing or deterring special influence or access (or the appearance thereof), any form of corruption short of bribery, distortion of the political marketplace, or equal protection-based theories addressing either the candidates (who must surmount wealth-based obstacles to mount a viable candidacy) or voters (for whom the candidates have already been pre-filtered in an unofficial "wealth primary").

- Resting on naïve and unrealistic views of both how money functions in politics (e.g., that "independent" spending cannot "corrupt," and that the only money that matters is that actually spent, rather than threatened to be spent) and how corporate governance works (e.g., *Citizens United*'s suggestion that "shareholder democracy" is adequate to ensure that corporate spending is in line with shareholder views).

Removing campaign finance regulation from the "money is speech" frame is intended to give the political branches (and, in many states, voters through direct ballot initiative) breathing space to experiment with pragmatic (hopefully trans-partisan) compromises that rein in campaign spending and allow a broad range of candidates not beholden to particular economic interests. This work could raise interesting issues involving incumbency advantage, equal protection, and the meaning of "press" in an era when non-traditional-media corporations can own television stations and print their own newspapers, let alone create and promote social media and other Internet-based means of mass communication. The symposium is intended to provoke thoughtful analysis of a constitutional framework that would enable a flowering of alternative campaign financing systems across the country, without permitting government to engage in invidious discrimination when doing so.

II. Corporate constitutional rights

From the Founding through the Civil War, corporations were generally understood to be artificial legal entities that were created by the state and had only those rights *against* the state that were conferred in their charters.[11] The doctrine of corporate constitutional rights is generally traced to the *ipse dixit* in *Santa Clara County v. Southern Pacific Railroad Co*.[12] that corporations are "persons" under the Equal Protection Clause. But the doctrine has evolved in parallel with political and industrial developments, and with theoretical developments in which the corporation was alternately re-thought as an "association" (a concept that finds expression in *Citizens United* itself), as a "natural entity" existing prior to law, or as a "nexus of contracts" among various stakeholders.[13]

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[11] *See, e.g., Bank of Augusta v. Earle*, 38 U.S. 519 (1839)*; Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819).

[12] 118 U.S. 394 (1886).

[13] For one historical overview of how these three conceptions have played out in different settings, see John C. Coates, *State Takeover Statutes and Corporate Theory*, 64 N.Y.U. L. Rev. 806 (1989).

During the Gilded Age and the early 20th century's *Lochner* era, corporate challenges under the Equal Protection and Due Process Clauses often succeeded in invalidating business legislation,[14] even as they failed to persuade the Court to treat corporations as "citizens" for purposes of the "Privileges or Immunities" Clause in the Fourteenth Amendment,[15] or to afford them rights against self-incrimination and unreasonable searches and seizures that are equivalent to those granted to individuals under the Fourth and Fifth Amendments.[16] In the middle of the 20th century, moreover, facing political backlash, the Court retreated from *Lochner* types of challenges by corporations under the Equal Protection and Due Process Clauses.[17]

Beginning in the 1970s, and of special significance at the dawn of the Information Age, the Court's constitutional review of business legislation was reinvigorated as the Court began striking down laws regulating corporate disclosures and communications as "speech" protected under the First Amendment. This trend finds recent expression in cases such as *Sorrell v. IMS Health Inc.*,[18] in which the Court invalidated a law limiting disclosure of drug prescription records; *Lorillard Tobacco Co. v. Reilly*,[19] in which the Court invalidated restrictions on tobacco advertising; and lower court cases invalidating disclosure requirements as unconstitutional "compelled speech."[20] Some commentators have referred to the First Amendment doctrine as it has evolved to apply to commercial speech as a new form of Lochnerism.[21] While the recent *Hobby Lobby* decision was based on an interpretation of the Religious Freedom Restoration Act (a statute) rather than the Constitution,[22] the companies involved in the case argued they had the right to "free exercise of religion" under the First Amendment.

Giving even some *constitutional* rights to corporations as such – as opposed to giving them legal rights that can be changed through normal democratic and common law processes, and as opposed to protecting the constitutional rights of individuals who work for or own incorporated businesses – has been criticized on several grounds, including:

- At the time of the original Framing and of the Reconstruction Amendments, the prevailing theory of the corporation (the "concession" or "artificial entity" theory) held that corporations are artificial legal entities created by government, do not exist prior to government, and have no rights *against* government except those provided in the corporate charter, which (if rights to do so are reserved) can be changed by statute. While other theories of the corporation have been advanced since then, an understanding of the Constitution's application to corporations informed by "original" or early American legal thought should rely on concession theory, and provide no constitutional protections to corporations beyond respect for the terms of their charters.

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[14] *See Conn. Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77, 90 (1938) (Black, J., dissenting) (collecting cases).
[15] *E.g., Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 178-85 (1868).
[16] *Hale v. Henkel*, 201 U.S. 43 (1906).
[17] *E.g., Williamson v. Lee Optical of Oklahoma Inc.*, 348 U.S. 483 (1955).
[18] 131 S. Ct. 2653 (2011).
[19] 533 U.S. 525 (2001).

[20] *See, e.g., Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67 (2d Cir. 1996) (invalidating law requiring labeling of milk from cows treated with hormones). The D.C. Circuit had recently invalidated several disclosure laws on similar "compelled speech" challenges, *see, e.g., Nat'l Ass'n of Mfrs. v. SEC*, 748 F.3d 359 (D.C. Cir. 2014) (invalidating provision requiring publicly-traded corporations to disclose whether their products contained minerals stemming from the war-torn Democratic Republic of the Congo); *R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205 (D.C. Cir. 2012) (invalidating regulation requiring updated warnings and improved labeling on cigarette packets), but this summer the en banc court decided to limit such challenges substantially, *see Am. Meat Inst. v. USDA*, No. 13-5281, 2014 WL 3732697 (D.C. Cir. July 29, 2014) (en banc).

[21] *See, e.g.,* Tamara R. Piety, *Against Freedom of Commercial Expression*, 29 Cardozo L. Rev. 2583 (2008). Moreover, the old Lochnerism isn't dead. While decades have passed since the Supreme Court has used the Equal Protection or Due Process Clauses to invalidate business legislation, lower courts still do so. *E.g., Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002) (invalidating, under Equal Protection Clause, state funeral casket sales regulation).
[22] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

- According constitutional rights (particularly speech rights) to corporations ignores complex internal relationships and (in practice) conflicts among various corporate stakeholders (directors, managers, shareholders, workers, etc.) and attribution of a constitutional right to "the corporation" may in fact infringe or burden the rights of natural person stakeholders.

- The values that various constitutional rights are designed to protect often do not apply in the case of corporations.

- In practice, both in its original *Lochner*-era incarnation and its revived form since the 1970s, judicial invalidation of legislation on the basis of corporate constitutional rights has promoted judicial and corporate power at the expense of democracy.

- Specific features of corporations giving rise to unique concerns not present for natural persons (e.g., centrality of profit motivation, difficulties of criminal punishment, benefits of incorporated status, such as limited liability and indefinite duration, etc.) justify treating corporations differently from natural persons for constitutional purposes.

One common reaction to a constitutional amendment specifying that corporations do not have constitutional rights is that corporate constitutional rights might be necessary for protection of *individual* rights, and removing constitutional protections for corporations could negatively affect individuals' rights. Many rights "of" corporations are in fact rights of individual participants in a corporation, *e.g.,* shareholders, directors, officers, or employees. That does not mean, however, that the *corporation* must be the bearer of the relevant constitutional rights.

For example, consider freedom of speech. A law limiting *corporate* communications would not (by itself) prevent any *individuals* affiliated with the corporation from speaking. A constitutional amendment that permitted a law restricting corporate communications would not expand the government's power to restrict *individuals'* speech. Restrictions on individual speech would continue to be reviewed under the First Amendment.

One might then think that the amendment would have no effect, but that also would be incorrect. What the law could do, after such an amendment, would be constrain corporate use of general treasury funds to engage in activities that the Court has treated as "speech." For corporations owned by one or a few closely allied shareholders, the effect would be minimal: it might force the shareholders to cause the corporation to dividend funds to shareholders, who could then use the funds in their individual capacities. However, where there are multiple owners, as with public companies, the effect would be significant, and appropriate, as it would leave to each shareholder the decision of how to spend the money so distributed, and not impose a sweeping rule that centralizes those decisions in the hands of corporate managers.

While de-constitutionalization of the corporation is most often discussed in terms of the First Amendment and sometimes the Fourteenth Amendment, it would apply to all constitutional provisions that can be characterized as "rights" (rather than purely structural features, such as preemption challenges under the Supremacy Clause or interferences with interstate commerce under the Commerce Clause). De-constitutionalization of the corporation could raise interesting issues with respect to constitutional and prudential standing doctrines (whether a corporation can raise a claim on behalf of a natural person, or vice versa; First Amendment overbreadth; shareholder standing rule; etc.). For example, there may also be situations where a corporation or association, lacking its own constitutional rights, might be well-positioned to assert the rights of individuals via third-party standing. But in such instances, the burden of establishing the need for such special standing rules would be on the litigants, and the rights being asserted should be understood to be those of individuals represented by the corporate or associational entity, with implications for how individuals so represented might want to opt out or otherwise assert individual interests implicated in the dispute.

The symposium is intended to provoke thoughtful analysis of how the rights of natural persons can be fully protected in various circumstances without the need for according constitutional protection to corporate entities.

APPENDIX: The amendment proposals

In response to *Citizens United*, two sets of constitutional amendment bills have been introduced in the Senate, aimed at campaign finance and corporate constitutional rights respectively. While as recently as several months ago there were several different specific bills in each category, elected officials and advocacy groups have converged on a single pair of Senate bills, which (along with their companion-identical House bills) can be deemed representative.

Campaign finance ("Democracy For All Amendment")

S.J. Res. 19 (Sen. Udall)[23]

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

Section 1. To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

Section 2. Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

Section 3. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.

Corporate constitutional rights ("People's Rights Amendment")

S.J. Res. 18 (Sen. Tester)[24]

Proposing an amendment to the Constitution of the United States to clarify the authority of Congress and the States to regulate corporations, limited liability companies or other corporate entities established by the laws of any State, the United States, or any foreign state.

Section 1. We the people who ordain and establish this Constitution intend the rights protected by this Constitution to be the rights of natural persons.

Section 2. The words people, person, or citizen as used in this Constitution do not include corporations, limited liability companies or other corporate entities established by the laws of any State, the United States, or any foreign state, and such corporate entities are subject to such regulation as the people, through their elected State and Federal representatives, deem reasonable and are otherwise consistent with the powers of Congress and the States under this Constitution.

Section 3. Nothing contained herein shall be construed to limit the people's rights of freedom of speech, freedom of the press, free exercise of religion, freedom of association and all such other rights of the people, which rights are unalienable.

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[23] Available at http://1.usa.gov/1rnQ3cL.

[24] Available at http://1.usa.gov/1nD6XUq.