Marbury v. Madison [1803]

His last day in office, President Adams appointed over fifty new judges as Federalists sought to keep control of the judiciary after Thomas Jefferson and the Anti-Federalists took office. Appointments were made under two new acts, one of which extended the original authority of the Supreme Court under the Constitution in order for the president and judiciary to make the appointments. When William Marbury did not receive his new appointment under the new president, he sued.

This was the first test of what happens when an act of Congress conflicts with the Court's interpretation of the Constitution. Supreme Court ruled it had the supreme power to interpret constitutional law and could overrule laws or policies made by Congress and the President. The Judiciary Act of 1801 was ruled unconstitutional. Judges appointed under it could not take office.

The Court's new power of "judicial review" allowed it to make law <u>at its pleasure</u> through creative interpretation. This posed a new danger. Thomas Jefferson warned: *"The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."* (1819)

1803

establishes judicial review

Dartmouth College v. Woodward [1819]

Dartmouth College, a corporation, had a royal charter granted by the King of England in 1769. New Hampshire wanted to alter the charter to turn the private school into a public school.

In 1819, the Supreme Court gave corporations *standing* in the Constitution – the ability to claim rights and bring cases under it. In so doing, the Court created a new actor under the Constitution. When the Court recognized that a corporation's charter was a Contract under the Constitution, it created a new economic theory that courts could, and would, weigh against fundamental rights – against human dignity, freedom, and equality.

The Constitution forbids states from passing laws that interfere with a Contract.* The Court's new economic theory infringed the 10th Amendment police powers of states to control the corporations that they created. The ruling gave rise to the modern American business corporation and the "*free enterprise*" system – largely free of state control.

* Constitution, Article I, Section 10, Contracts Clause

1819

corporations gain standing in Constitution

Santa Clara County v. Southern Pacific Railroad [1886]

Before hearing the case, Justice Morrison Waite said: *"The court does not wish to hear argument on the question whether the provision in the 14th Amendment to the Constitution… applies to these corporations. We are all of opinion that it does."*

This offhand comment by a single Justice was recorded in court documents and accepted as settled that corporate persons were equal to real persons under law. This ruling removed the basic separation of power between natural persons with constitutional (fundamental) rights and artificial persons with privileges.

It led to a new body of law on "*corporate personhood,*" artificial persons with human rights. Justices have since struck down hundreds of local, state, and federal laws enacted to protect people from corporate harm, based upon the theory of corporate personhood.

1886

corporations gain 14th Amendment equal protection

Noble v. Union River Logging [1893]

When the federal government took back land it had granted to a logging company, the corporation sued, claiming its 5th Amendment right to due process was violated. The federal government counter-sued, demanding to know why the government should not revoke the land, because the corporation had no such rights.*

Supreme Court ruled corporations, as "persons" under the 14th Amendment, were entitled to Bill of Rights protections. The Court granted 5th Amendment due process rights to artificial persons for protection against the federal government.

This ruling *gave corporations standing in the Bill of Rights* and set the stage for further usurpation of human rights by "artificial persons."

* William Noble was the U.S. Secretary of Interior

08.08.18

1893

corporations: *standing in Bill of Rights*

Chicago, Burlington & Quincy Railroad Co. v. Chicago [1897]

When Chicago decided to widen Rockwell Street, the city took land from adjacent private property owners. The city awarded fair compensation to human persons, but not to artificial persons. A railroad corporation sued, claiming its 14th Amendment right to just compensation was violated.

Supreme Court agreed and ruled corporations, as "persons" under the 14th Amendment, were entitled to Bill of Rights protections *against states*. This broadened the reach of corporations to other Bill of Rights' protections to use *against states*, as well as federal government. It also further limited the power of states to control corporations.

1897

Corporations gain Bill of Rights protection against states

Lochner v. New York [1905]

A New York bakery owner, Joseph Lochner, sued New York over a law that limited workers to 10 hours a day and 60 hours a week. The law protected workers' health and safety, but many new immigrants were desperate for work and willing to work long hours.

Supreme Court created a new right under 14th Amendment substantive due process: freedom of contract. Persons were free to form contracts without government restrictions. Ruling usurped 10th Amendment police power of states to regulate workers' health and safety, and it allowed businesses to exploit the poor and workers.

"Lochner" became shorthand for using the Constitution to invalidate government regulation of corporations. From 1905 to the 1930s, courts threw out some 200 government regulations that protected workers.

Justice Holmes dissents: *"A Constitution is not intended to embody a particular economic theory…"* After the Depression, Justice Holmes' dissent became the prevailing interpretation of the 14th Amendment's Due Process Clause and *Lochner* was overruled. See *West Coast Hotel Co. v. Parrish*.

1905

freedom of contract exploits workers

Hale v. Henkel [1906]

Edwin Hale was treasurer of one of six companies under federal investigation for fixing the price of tobacco in violation of anti-monopoly law. When served with a grand jury subpoena (an order), Hale pled the 5th and refused to turn over corporate records.

The Supreme Court ruled an officer of a corporation charged with a crime could plead immunity as a private citizen, but not a company. Because people, not corporations, are charged with crimes, this ruling acts to protect corporations from revealing illegal business practices.

The Court reasoned that, if the word "person" in the 14th Amendment includes corporations, it also includes corporations when used in the 4th and 5th Amendments. It ruled a corporation is entitled to protection under the 4th Amendment against unreasonable searches and seizures. It ruled the subpoena was too broad; it was unreasonable. The ruling limited government's ability to enforce laws, as required under the Constitution.*

* Constitution, Take Care Clause, Article II, Section 3; 10th Amendment, State police powers

1906

corporate search & seizure protection

Dodge v. Ford Motor Co. [1919]

Over the years, business tycoon Henry Ford cut the price of Model T Fords, while raising workers' wages in an act of self-proclaimed charity to spread the benefits of the industrial system. Profits were used to expand operations, instead of shareholder dividends. Ford's ulterior motive was to squeeze out competition from Dodge Motors. Two of Ford's largest shareholders – the Dodge brothers – sued.

The Michigan Supreme Court ruled Ford Motor was in business for profit and Ford could not turn it into a charity: "*A business corporation is organized and carried on primarily for the profit of its stockholders. The powers of directors are to be [used] for that end.*"

This established the economic theory of "stockholder primacy." It is still the leading case on corporate purpose. It is used to claim economic harm from government regulations – like ones that protect public health, workers, and the environment, because it costs corporations money to obey laws that make products and work places safe. Ruling limits the ability of federal and state governments to enforce laws.*

* Constitution, Take Care Clause, Article II, Section 3; 10th Amendment, State police powers

1919

corporations exist to make money

Pennsylvania Coal Co. v. Mahon [1922]

Pennsylvania Coal Company owned subsurface rights to a coalfield under some homes. But a state law forbade the taking coal in support pillars – the land that supported homes on the surface. The corporation sued a property owner when the owner tried to prevent the corporation from mining the support coal under his house. The corporation argued the state law was a "regulatory taking," because obeying the law would cause the company economic harm.

Supreme Court gave corporations the 5th Amendment right to just compensation for economic harm from regulatory takings to use against government actions that diminish value of private property or make land unusable. Under this economic theory, courts must weigh a corporation's costs to comply with laws against the corporation's loss of property value for obeying the law. Prior to this, courts applied the 5th Amendment Takings Clause only when the federal government physically seized property.

Ruling limited the ability of government to enforce laws, because it costs corporations money to obey laws.* This ruling set the stage for corporations to claim legal rights to protect future profits, as well as existing property.

* Constitution, Take Care Clause, Article II, Section 3; 10th Amendment, State police powers

1922

corporations gain compensation for regulatory takings

Taft-Hartley Act [1947]

Congress enacted this law over President Truman's veto in an anti-union climate, driven by fears of Communist infiltration of labor unions, growth and power of unions, and a series of large-scale strikes. The Act restricted the labor movement's ability to strike, prohibited labor unions and corporations from making direct contributions to federal elections, and required union officers to sign non-communist affidavits with government.

The law gave corporate employers the 1st Amendment right to free speech in the union certification process, which allowed employers to be present (and interfere) with union organizing. It greatly weakened the National Labor Relations Act of 1935, while still preserving rights of labor to organize and bargain collectively – but with the employers present.

1947

Taft-Hartley Act corporations: right to free speech

First National Bank of Boston v. Bellotti [1978]

When several corporations were banned by state law from spending money on a citizens' ballot measure on tax policy, they sued, claiming the state law violated their right to free speech.

Supreme Court overturned state restrictions on corporate spending on citizens' ballot measures and made *commercial advertising* on them a form of free speech. Justice Powell wrote the opinion for the majority.

The ruling defined free speech as a right of corporations for the first time. It triggered a spending boom on citizens' ballot measures, as wealthy people and corporations sought to influence the public debate and pass their own laws through "citizen" initiatives.

Justices White, Brennan, and Marshall dissent: *"...the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only our economy but the very heart of our democracy, the electoral process... The state need not allow its own creation to consume it."*

Justice Rehnquist dissents: *"The blessings of perpetual life and limited liability so beneficial in the economic sphere, pose special dangers in the political sphere."*

1978

commercial money is free speech

Pacific Gas & Electric Co. v. Public Utilities Commission of California [1986]

A California law required public utilities to allow consumer advocacy groups to publish messages to consumers in the extra space in utilities' billing envelopes. The logic was that the extra space belonged to the ratepayers, not the utility. PG&E sued, claiming the law violated its right to free speech.

The Supreme Court ruled the state law unconstitutional, as the right to speak includes the right not to carry messages that one disagrees with: "The choice to speak includes within it the choice of what not to say."

The case established the nearly absolute right of a publisher to choose not to carry messages it does not agree with.

1986

corporations gain right NOT to speak

International Dairy Foods Association v. Amestoy **[1996]**

Corporations wanted to overturn a Vermont law that required GMO labeling of state dairy products containing bovine growth hormone. A U.S. Appeals Court ruled the state law violated a corporation's right *not to speak* and then extended the new right *not to speak* to apply to political and commercial speech and statements of fact and opinions.

This eliminates truth in labeling, ads and campaigns. This ruling grants corporations the right to silence people's right to know under the Emergency Planning and Community Right-to-Know Act in Title III of the Superfund Amendment and Reauthorization Act of 1986.

Judge Altamari dissents: *"The… 1st Amendment, in its application to commercial speech, is to favor the flow of accurate, relevant information. The majority's [use] of the 1st Amendment to invalidate a state law requiring disclosure of information consumers reasonably desire stands the [1st] Amendment on its ear."*

Case represents conflicting claims under 1st Amendment: the human right to be informed versus the corporate right to remain silent and not provide accurate, factual information. Case highlights the immoral arrangement of granting human rights to artificial entities.

1996

corporate right not to speak extended

Kelo v. City of New London [2005]

Landowners sue New London, Connecticut, claiming city misused its eminent domain power when it transferred land from one private owner to another private owner for economic development. The 5th Amendment Takings Clause restricts eminent domain seizures for public use.

Supreme Court ruled that a state government could delegate (assign) use of its eminent domain power to an artificial person under state laws. Court also ruled that taking land to serve a public purpose, such as creating new jobs and new revenues, qualified as public use.

Justice O'Connor dissents: *The decision eliminates "any distinction between private and public use of property – and thereby effectively delete[s] the words 'for public use' from the Takings Clause of the 5th Amendment."*

Justice Thomas dissents: *"Something has gone seriously awry with this Court's interpretation of the Constitution. Though citizens are safe from the government in their homes, the homes themselves are not…. (E)xtending the concept of public purpose to encompass… [economic goals], guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful.*

2005

eminent domain use for private gain

Energy Policy Act [2005]

Congress exempted oil and gas activities involving hydraulic fracturing from federal enforcement under key sections of 8 major laws protecting public health and the environment. These rollbacks led to a major increase in oil and gas drilling on federal lands.

The gas industry enjoys full or partial federal exemptions from the (1) Clean Water Act; (2) Clean Air Act; (3) U.S. Safe Drinking Water Act; (4) National Environmental Policy Act; (5) Resource Conservation and Recovery Act; (6) Toxic Release Inventory; and (7) Superfund or the Comprehensive Environmental Response, Compensation, and Liability Act, CERCLA. *The gas industry is the only industry allowed to pump undisclosed chemicals directly into the ground, even when adjacent to underground sources of drinking water.*

The law also increased coal leasing, created incentives to drill for oil in the Gulf of Mexico and to create more nuclear reactors, and authorized commercial programs for fracking public lands in Utah, Colorado and Wyoming. The law authorized ten billion dollars for development of unsafe, polluting energies and 4.5 billion dollars for safe, green energies.

08.08.18

2005

Energy Policy Act endangers health

Citizens United v. Federal Election Commission [2010]

A non-profit group wanted to air a film critical of a presidential candidate and to advertise the film in television broadcasts during election campaigns. Federal law prohibited corporations from advertising within a certain time before an election and from spending funds to support or defeat a political candidate. The group sued, claiming the federal law violated its right to free speech.

Supreme Court ruled law restricting spending for communications by non-profit and for-profit corporations and labor unions to influence political campaigns was unconstitutional. Ruling reverses a 100-year precedent of congressional authority to regulate spending in election campaigns and greatly compromises integrity of the election process. 85 percent of Americans disagreed with the court.

Justice Stevens dissents: *"At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding… It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics."*

2010

corporate right to unlimited spending to influence elections

SpeechNow.org v. Federal Election Commission [2010]

A nonprofit group wanted to accept contributions over the $5,000 limit from individual donors, and it wanted to avoid the donor reporting requirements. SpeechNow claimed laws that required it to register, report, and restrict contribution limits for political spending violated its right to free speech.

The U.S. District Court of Appeals applied the precedent it had set 3 months earlier to *SpeechNow*. The Court ruled Super PACs or independent-expenditure Political Action Committees must register as any other PAC. However, it ruled that Super PACs could accept unlimited contributions from individuals, as well as corporations and unions, without disclosing donor names.

This extended *Citizens United* and further compromises election integrity – and our democracy.

2010

corporate right to unlimited contributions

McCutcheon v. FEC [2014]

The Federal Election Campaign Act was amended in 1974 after the Watergate Scandal to create overall limits on direct contributions from individuals to national political parties and federal candidates in a year. The U.S. District Court upheld limits as a way to prevent "corruption or the appearance of corruption…"

Supreme Court struck down limits on overall federal campaign contributions, claiming aggregate limits do not act to prevent corruption.

Justice Breyer dissents for minority: The decision "creates a loophole that will allow a single individual to contribute millions of dollars to a political party or to a candidate's campaign. *Taken together with Citizens United… [this] decision eviscerates our Nation's campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy…"*

2014

eliminates overall limits on campaign contribution