# Activating My Democracy

- HIGH SCHOOL -



Who Rules?
The Democracy Crisis

Understanding the journey



# Activating My Democracy

## Civics lessons and resources for grades 9-12 First Edition, March 2018

**Explores how to:** (1) Move ideas into action; (2) Understand values, wealth, and liberties; (3) Understand rights, privileges, and the balance of power; (4) Trace the historic roots of the democracy crisis in current events; (5) Amend the U.S. Constitution to protect human rights; and (6) Exercise our rights to defend what we love.

**Empowers:** Youth by nurturing self-efficacy and by teaching foundational civics concepts and skills to take control of their destiny.

**Engages:** Youth as change agents to define their roles as global citizens during a critical time in human history.

#### Special thanks to

ad hoc focus group of retired teachers of King County, WA Sunnyside Environmental School grades 6–8 (2015–2016)

#### **Contributors**

occasional gifts from those able to pay it forward and the Jane Smith Turner Foundation

#### Riki Ott, PhD

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"Power concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong, which will be imposed upon them, and these will continue 'til they are resisted with either words or blows, or with both."

~ Frederick Douglass, 1857

"The struggle of man against power is the struggle of memory against forgetting."

~ Milan Kundera, 1978

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Timeline of Personhood Rights and Powers, 2002 Adapted and used with permission from Women's International League for Peace and Freedom https://movetoamend.org/sites/default/files/CorpPersonhoodExplanationTimeline.pdf

POCLAD Artwork by Matt Wuerker

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# Who Rules? The Democracy Crisis

## **Understanding the journey**

#### **Rationale**

While bidding farewell to White House staff upon his retirement from public service in 1795, Alexander Hamilton spotted a copy of the Constitution. He remarked, "Now, mark my words. So long as we are a young and virtuous people, this instrument [the

"A Republic, if you can keep it."

~ Benjamin Franklin, 1787

Constitution] will bind us together in mutual interests, mutual welfare, and mutual happiness. But when we become old and corrupt, it will bind us no longer."

Hamilton was not the only Founder to express doubts about the long-term viability of the great democracy experiment. Founders knew that intergenerational vigilance was necessary for success of the young Republic.

Lesson 3 examined the inherent weaknesses embedded in the constitutional framework and the role of the economic elite, Monied Power, in exploiting these weaknesses through the judiciary to consolidate wealth and power. During the first 160 years of the democracy experiment, courts transformed the privilege of doing business in corporate form into fundamental rights that could be used to avoid the very laws meant to protect people and the environment.

Lesson 4 continues to explore the democracy journey during the next 70-plus years to present. Starting with people's movements for new civil liberties and civil rights, students explore how these efforts sought to fulfill the promise of the Civil War Amendments.

The business community perceived these efforts as a broad attack on the American free enterprise system and its values. Students are introduced to the Powell Memo of 1971, the secret (at the time) plan of the business community to take over the media, education, and the government by working through the judiciary.

Students explore landmark laws and social consequences that resulted from a strategic legal campaign, organized by the Monied Power, to influence voter opinions and, hence, political campaign outcomes.

Finally, students are presented challenge questions to reflect on the democracy journey – and where to from here.





#### **Enduring Understanding for Civics Grades 9-12\***

- Critique relationships among governments, civil societies, and economic markets. (D2. Civ.6.)
- Analyze the impact and the appropriate roles of personal interests and perspectives on the application of civic virtues, democratic principles, constitutional rights, and human rights. (D2.Civ.10.)
- Analyze how people use and challenge local, state, national, and international laws to address a variety of public issues. (D2.Civ.12.)
- Evaluate public policies in terms of intended and unintended outcomes, and related consequences. (D2.Civ.13.)
- Analyze historical, contemporary, and emerging means of changing societies, promoting the common good, and protecting rights. (D2.Civ.14.)
   \*C3 Framework for Social Studies State Standards
   http://www.socialstudies.org/system/files/c3/C3-Framework-for-Social-Studies.pdf

#### **Essential Questions**

- Have the Civil War Amendments achieved their intended purposes?
- What are the social consequences of court rulings on campaign finance regulations post-Powell memo?
- What has been the Court's role in preserving discriminatory practices?
- What has been the Court's role in promoting corporate welfare over the common good?
- Should artificial persons be entitled to fundamental human rights?

#### **Learning Objectives**

Students can:

- Explain how exceptions for crime in 13<sup>th</sup> and 14<sup>th</sup> Amendments, Black Codes, and war on drugs were and are used to preserve racial discrimination.
- Describe examples of social consequences of court rulings on campaign finance regulations post-Powell memo.
- Explain the Court's role in preserving racism, classism, and genderism through its interpretation of law.
- Give examples of harm to real people when artificial persons exercise fundamental rights such as regulatory takings, eminent domain seizures, and 1st Amendment free speech.
- Describe how the Court transformed the privilege of doing business into fundamental rights for artificial persons and the social consequences of this legal theory.

"No thoughtful person can question that the American economic system is under broad attack... Under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change."

~ Powell Memo, 1971





## **Materials & Preparation**

### Lesson 4

Students continue to explore the democracy journey, starting with people's movements for civil liberties and civil rights during the 1950s to 1970s. Students are introduced to the Powell Memo of 1971 and the strategic legal campaign, organized by the Monied Power, to influence political campaign outcomes. Students explore the landmark laws and social consequences that resulted from this still-ongoing campaign and then reflect on the democracy journey, creating their own narrative of who rules.

#### **Time for Lesson 4**

Approximately 50 minutes (with assigned reading): interactive exercises supported by films and PowerPoint slides.

#### Materials & Prep for Shared Resources in Lessons 3-5

- 1 pocket copy per student of Declaration of Independence and U.S. Constitution
  - » Bulk discounts available: <a href="https://www.nccs.net/pc">www.nccs.net/pc</a>
- 8 double-sided copies (2+ per working group) of "Timeline Stories"
- 8 double-sided copies (2+ per working group) of "Timeline Summary"
- 8 single-sided copies (2+ per working group) of Lessons 3-4 "Core Vocabulary"
- 8 single-sided copies (2+ per working group) of Lessons 3-4 "Support Vocabulary"
- OVERRULED labels remainder from Lesson 3
- Timeline of Rights and Powers see Lesson 3

#### **Materials**

- PowerPoint notes and slides
- 10-double sided copies, uncollated, pages 9-14 of ACTIVITY 3, "Exploring the Timeline"
  - » Film, Jay Z The War on Drugs https://www.youtube.com/watch?v=HSozqaVcOU8
- 1 copy OVERRULED label on YELLOW paper, cut apart
- Exit ticket: 1 single-sided copy per student of ACTIVITY, "Who Rules? The Democracy Crisis"
- Painter's tape for labels





#### **Preparation**

- Review lesson materials, including PowerPoint notes and slides, films, teaching guides for activities, and vocabulary
- Post online, if not already posted
  - » Timeline: Stories, Summary, and Resources
  - » Core and support vocabulary for Lessons 3 and 4
- Download and cue for viewing
  - » Slide 7 Jay Z: The War on Drugs
- In classroom, display Timeline of Rights and Powers
- Arrange desks into 3 table groups and designate as Table 1, 2, and 3
- Provide table groups with:
  - » Shared resources: pocket Constitutions, Timeline Stories and Summary
  - » Vocab sheets for Lessons 3 and 4
  - » Table 1: 1954–1970s, pages 9–10
  - » Table 2: 1976–2014 (Monied Power), pages 11–12
  - » Table 3: 2001–2016 (People Power), pages 13–14
- As students enter classroom, direct students to join the table group for which they
  prepared with the assigned reading
- Hand out 10 minutes before end of class
  - » Slide 12: Exit tickets
- Prep OVERRULE labels (1 Blue, 2 Yellow)
  - » Affix one sticky roll of painter's tape on blank side of each label
  - » Post on wall behind Timeline 1950s–1970s
- On side of white board, write:
  - » Vocabulary ballot measure campaign finance regulations commercial speech negative speech penumbra political speech

"The Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities."

~ Franklin Delano Roosevelt
Address on Constitution Day
Washington, D.C.
September 17, 1937





# PowerPoint Notes

### Lesson 4

#### 1. Ultimate Civics! COVER SLIDE

Everyone has a story.

#### Suggested instruction for teacher

 ADD your personal 1-minute story to set this lesson on the difference between democracy in principle and practice.

In this lesson, we continue our exploration of landmark laws with the people's movements of the 1950s–1970s, and we will examine the social consequences that are currently shaping our society.

#### 2. Essential questions

Our essential questions are:

<CLICK> for first question and after each question except last

- Have the Civil War Amendments achieved their intended purposes?
- What are the social consequences of court rulings on campaign finance regulations post-Powell memo?
- What has been the Court's role in preserving discriminatory practices?
- What has been the Court's role in promoting corporate welfare over the common good?
- Should artificial persons be entitled to fundamental human rights?

#### 3. Exploring the Timeline

#### Instructions



- Review the ACTIVITY sheets, "Exploring the Timeline."
- » Table 1, 1954–1970s: All data cards, all questions
- »Table 2, 1976–2014: Campaign finance regulations ONLY, all questions
- » Table 3, 2001–2016: Civil rights (YELLOW and BLUE data cards) and the ORANGE 2005 data cards, all questions
- Work at your tables to answer the assigned support questions.
  - » Identify what rights were recognized.
  - » Identify what laws were amended or overruled.
- · Prepare summary of
  - » findings for each question
  - » main points of time period
- Finish the concluding statement.
- Clarify any questions.
- Allow 15 minutes for exploration and 25 minutes for sharing findings.

## 4. 1950s-1970s: Civil rights movements

 Instructor (or students) may describe events of the times, using the photos, to set the stage for the civil rights movements.





Polluted rivers caught fire. Buses were set afire. Civil rights leaders and allies were murdered.

Marches for civil liberties and civil rights led to laws, amendments, and Supreme Court rulings to end major forms of discrimination; to recognize civil liberties and civil rights; to end the Vietnam war; and to secure public health rights, and worker safety and health rights, with federal laws.

#### **Presentation guide**



How did these civil rights...

<CLICK>

...help Americans realize the promise of the Civil War Amendments?

- 1954 Brown v. Board of Education of Topeka was a series of court rulings over 24 years that desegregated schools under ruling that separate is not equal. With these civil rights, African Americans regained access to 14th Amendment rights and much of white world.
  - Overruled separate but equal in Plessy (1896) by series of court rulings
    - » Post BLUE label across Plessy
- 1964 24th Amendment prohibited raciallymotivated practice of using poll taxes to qualify to vote. With this <u>civil right</u>, more African Americans gained access to 15th Amendment fundamental right to vote.
  - Overruled state Jim Crow laws that used poll taxes to qualify to vote
- 1964 Congress created strong enforcement measures in the Civil Rights Act to prevent discrimination in public

#### RESOURCES

Brown v. Board, 1954 https://www.history.com/topics/ black-history/brown-v-board-ofeducation-of-topeka

https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-stone/equality-and-the-constitution/brown-v-board-of-education-of-topeka-brown-i/

1955 (II): http://www.casebriefs. com/blog/law/constitutionallaw/constitutional-lawkeyed-to-stone/equalityand-the-constitution/ brown-v-board-of-education-oftopeka-brown-ii/

1979 (III): http://www.nytimes. com/1989/12/14/us/topeka-hasfailed-to-do-enough-to-integrateschools-court-rules.html

No More: The Children of Birmingham 1963 and the Turning Point of the Civil Rights Movement, 10-minute documentary film https://www.youtube.com/ watch?v=hCxE6i\_SzoQ

places, federally-assisted programs, and employment opportunities. <u>These civil rights</u> helped eliminate Jim Crow practices that infringed 14<sup>th</sup> and 15<sup>th</sup> Amendment fundamental rights of African Americans.

1965 Congress created strong enforcement measures in the Voting Rights Act to





reduce racial discrimination in (mostly southern) state voting practices. With these civil rights, more African Americans gained access to 15<sup>th</sup> Amendment fundamental right to vote.

- 1968 Congress passed Fair Housing Act to prevent discrimination in sale, rental, and financing of housing based on race, religion, national origin, class, disability, or gender. These civil rights helped eliminate Jim Crow practices that infringed 14th Amendment rights of African Americans.
  - Overruled Jim Crow state laws, by series of civil rights acts through Congress and 24<sup>th</sup> Amendment

## What is the legal basis for the Supreme Court's rights to privacy laws?

<CLICK>

1967 Court ruling <u>recognizes</u> civil right to interracial marriage under 14<sup>th</sup> Amendment Equal Protection Clause

#### RESOURCES Civil Rights Acts

1964: http://www.history.com/topics/black-history/civil-rights-act

1965: http://www.history.com/topics/black-history/voting-rights-act

1968: http://www.history.com/topics/black-history/fair-housing-act

1973 Court ruling <u>recognizes</u> civil rights for women concerning their own bodies under "<u>penumbras</u>" (core vocab) of 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup>, and 14<sup>th</sup> Amendments

#### <CLICK>

**Instructor asks**: Before moving on, tell us what is remarkable about the 26<sup>th</sup> Amendment?

1971 It was ratified in record time – just over 2 months – because of unrelenting pressure from youth.

#### <CLICK>

**Instructor asks:** Summarize the actions and laws passed during the 1970s and 1980s.

1970s–1980s: President Nixon formed EPA, and dozens of laws were passed or strengthened to secure public health rights, and worker safety and health rights, with environmental laws.

#### BEYOND LOVING

In 1958 when the Lovings married, 4% of Americans approved of interracial marriage. By 2013, 87% of Americans approved.

In the U.S. there are at least 22 million multiracial families, and this is growing 3 times faster than the U.S. population.

Loving Day was founded on June 12, 2004. It is now the largest interracial celebration in the U.S.





RESOURCES

Loving v. Virginia, 1967

http://kids.laws.com/loving-v-virginia

Loving, film: https:// www.youtube.com/ watch?v=zRXuCY7tRgk

Roe v. Wade, 1973 https://www.casebriefs.com/ blog/law/family-law/familylaw-keyed-to-weisberg/ private-family-choicesconstitutional-protection-forthe-family-and-its-members/ roe-v-wade/

14<sup>th</sup> Amendment and 10 landmark U.S. Supreme Court cases https://constitutioncenter. org/blog/10-huge-supreme-court-cases-about-the-14th-amendment

What reaction might be anticipated by the Monied Power to the people's movements and passage of federal laws to protect public health and the environment?

Reaction: The new federal laws were a perceived threat to profits and power. The Monied Power might react by organizing themselves and their corporations to fight the common threat.

#### Strategies might include:

- Seeking new fundamental rights through court to challenge the new laws and weaken their impact
- Influencing public opinion to influence

- the vote and gain control of elected officials who pass new laws
- Seeking ways to influence and control the public education system to secure influence over future voters

## Summarize key points & finish statement below

- Powerful and strategic people's movements drove a series of civil rights laws through Congress and the courts to invalidate long-standing discriminatory practices against African Americans in settings such as employment, education, housing, voting, and access to public facilities.
- The same movements drove new fundamental rights to privacy into law through the courts, as the Supreme Court began to find new rights in the penumbras of (derived from) other existing Constitutional rights.
- The new, stronger federal laws to protect public health, worker safety, and the environment posed a threat to corporate power.

Balance of power shifted towards... the People Power – briefly.

#### 5. Monied Power organizes

"What happened to the seventies?" Adults who were part of these civil rights movements often ask this.

To understand the next two teams' stories, we need to look at what happened to the seventies.

In 1971, a corporate lawyer named Lewis Powell wrote a secret memo to his friend, the Director of the U.S. Chamber of Commerce.

The memo called for business leaders to organize and push back against the people's





broad "attack of American free enterprise system."

Powerful corporate owners and the Chamber organized to follow Powell's blueprint and gain control of:

#### <CLICK>

the media, the education system, the political arena, and the courts.

#### <CLICK>

Public opinion could be swayed by buying and monitoring national television networks, lots of paid ads, and through science journals and books.

#### <CLICK>

The education system could be infiltrated with a speakers' bureau of scholars, insistence on a balance of professors, evaluating or creating textbooks, and business opportunities for graduates – after burdening students with huge debts.

#### <CLICK>

#### RESOURCES

The Powell Memo, 1971 http://law2.wlu.edu/powellarchives/ page.asp?pageid=1251

http://billmoyers.com/content/the-powell-memo-a-call-to-arms-for-corporations/2/

The "neglected political arena" could be captured through well-funded election campaigns to secure popular votes for desired candidates, through paid lobbyists to shepherd passage of key bills, and by influencing regulators to weaken rules.

#### <CLICK>

The "neglected opportunity" in the courts could be overcome by a staff of well-paid

lawyers, constantly monitoring court dockets and drafting legislation.

#### <CLICK>

The key was the judiciary.

 Read: "Under our constitutional system, especially with an activistminded Supreme Court, the judiciary may be the most important instrument for social, economic, and political change." ~ Powell Memo, 1971

Two months after writing the memo, Powell became a Supreme Court justice. Powell's memo was still secret.

#### **RESOURCE**

Campaign finance regulation history https://ballotpedia.org/History\_of\_campaign\_finance\_regulation

#### 6. What is "speech"?

 Instructor leads with a story about campaign finance regulations and scaffolding with a meme.

Democracies are carried by free and fair elections. "<u>Campaign finance regulation</u>" is about rules on giving money, spending money, and reporting donor names. This predates the Constitution by over 30 years. It's part of core vocabulary.

In **1757**, George Washington bought \$195 worth of rum punch, whiskey, hard cider, and food for friends prior to an election for the House of Burgesses – the first legislative assembly of elected representatives in North America. Washington handily won, after being defeated three years earlier when he had not supplied his friends with food and drink, as was the custom of the times.





After the election, the House of Burgesses passed a law prohibiting candidates, or persons on their behalf, from giving voters "money, meat, drink, entertainment or provision ...any present, gift, reward or entertainment, etc. in order to be elected."

 Instructor continues scaffolding with conceptual meme for students.

In **1971**, over 200 years later, Congress created the Federal Elections Commission to oversee and enforce campaign finance laws.

New or revised rules included:

<CLICK 1 for 3 green balloons>

- strict limits on campaign giving by persons and entities – corporations and unions:
- overall limits on campaign giving;

<CLICK 2 for 2 green balloons>

 strict limits on campaign <u>spending</u> by persons and entities;

<CLICK 3 for 3 green balloons>

- donor disclosure reporting the names of donors;
- truth in campaign and marketing advertising; and
- a ban on corporate money in citizens' initiatives and referendums.

"Initiatives" and "referendums" are "ballot measures" used by citizens to place a proposed rule change on a ballot for a popular vote. These are on the vocab sheet.

As part of the plan that grew out of the Powell Memo, the Monied Power began to challenge campaign finance reform laws under a series of 1st Amendment rights cases.

Let's see what happened.

#### Instructions for animated slide

- <CLICK> to show court ruling and consequences as students narrate.
- Animation is designed to show issue, ruling, and consequence for each case.

#### Presentation guide



## Who did these rulings advantage? Why?

<CLICK 4 for Court ruling>

1976 Supreme Court ruled "political speech" (core vocab) is money under 1st Amendment and struck down limits on campaign spending.

<CLICK 5 for arrow (consequence)>

<CLICK 6 for Big Money>

Ruling advantaged persons with money to influence voters through expensive mass media advertising during election campaigns.

#### **RESOURCES**

About rbGH (recombinant bovine growth hormone) https://www.centerforfoodsafety.org/issues/1044/rbgh/about-rbgh

Mandatory labeling of (some) GMO foods in 2016

https://www.washingtonpost. com/news/wonk/wp/2018/05/04/ mandatory-gmo-labels-arecoming-for-your-food/?utm\_ term=.b59e6af9146e





<CLICK 7 for citizens' issue>

<CLICK 8 for Court ruling>

1978 Supreme Court overturned state restrictions on corporate spending on citizens' ballot measures and made "commercial speech" (core vocab) – advertising – protected under 1st Amendment.

#### <CLICK 9 for arrow>

Ruling advantaged persons with money. 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.

#### <CLICK 10 for citizens>

1986 Supreme Court ruled the right to speak includes the right not to speak, meaning the right not to carry messages one disagrees with. "Negative speech" is core vocab.

<CLICK 11 for Court ruling>

<CLICK 12 for GMO law>

1996 A U.S. Appeals Court overturned a Vermont law that required dairy foods with Genetically Modified Organisms or GMOs to be labeled as containing GMOs.

#### <CLICK 13 for Court ruling>

The Appeals Court recognized corporations' right **not** to speak – in this case, the right **not** to tell consumers that their product contained GMOs.

#### RESOURCES

Buckley v. Valeo, 1976 http://www.amendmentgazette. com/how-spending-moneybecame-a-form-of-speech/

First National Bank of Boston v. Bellotti, 1978

http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-chemerinsky/first-amendment-freedom-of-expression/first-national-bank-of-boston-v-bellotti/

Corporate influence on citizens' initiatives

https://www.washingtonpost. com/blogs/govbeat/ wp/2013/11/08/initiativespending-booms-past-1-billionas-corporations-sponsortheir-own-proposals/?utm\_ term=.1a27e96988e4

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

https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law/constitutional-law-keyed-to-cohen/protection-of-penumbral-first-amendment-rights/pacific-gas-and-electric-company-v-public-utilities-commission-of-california/

International Dairy Foods
Association v. Amestoy, 1996
http://caselaw.findlaw.com/us2nd-circuit/1210635.html





The Court then extended negative speech to political and commercial speech, facts and opinions, which eliminated truth in labeling, ads, and election campaigns.

#### <CLICK 14 for arrow>

Ruling advantaged persons with money to withhold information from consumers and voters.

#### <CLICK 15 for citizens>

## The 2010 Court rulings are based on what two key rulings? Why?

The 2010 rulings based on the Justices' opinion in 1886 that corporations are "persons" entitled to equal protection under law, <u>and</u> the Court ruling in 1976 that money is the equivalent of speech in elections campaigns.

<u>Citizens United</u>: Court ruled that the only way for an artificial person to "speak" is by spending money to influence public opinion. Therefore, restricting spending was the equivalent of restricting free speech for artificial persons.

#### <CLICK 16 for Court ruling>

This ruling reversed a 100-year track record of Congress regulating <u>spending</u> in political campaigns.

#### <CLICK 17 for arrow>

<u>SpeechNow.org</u>: Following precedent set by <u>Citizens United</u>, a U.S. District Appeals Court removed limits on campaign <u>contributions</u> for individuals and artificial persons.

#### <CLICK 18 for Court ruling>

Court ruled that independent-expenditure "Super PACs" could accept unlimited funds without reporting donor names.

<CLICK 19 for 3 arrows>

#### **RESOURCES**

Citizens United v. Federal Election Commission, 2010 https://www.britannica.com/ event/Citizens-United-v-Federal-Election-Commission

http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-sullivan/rights-ancillary-to-freedom-of-speech/citizens-united-v-federal-election-commission/

SpeechNow.org v. Federal Election Commission, 2010 https://ballotpedia.org/ SpeechNOW.org\_v.\_Federal\_ Election\_Commission

McCutcheon v. Federal Election Commission, 2014 https://www.publicintegrity. org/2014/04/22/14611/ mccutcheon-decision-explainedmore-money-pour-politicalprocess

"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..."

~ Justice Breyer, 2014





## In the 2014 ruling, do you agree with the Court or dissenting minority? Why?

<u>Court</u>: Struck down limits on overall federal campaign contributions, claiming limits do not act to prevent corruption.

<CLICK 20 for Court ruling>

<u>Dissenting minority</u>: Warned that decision eviscerates Nation's campaign finance laws, leaving remnant incapable of dealing with democratic legitimacy.

<CLICK 21 for arrow>

<CLICK 22 for Monied Power and Judge's text>

 Can elections be "free and fair" without rules to limit spending and giving for campaigns? Why or why not?

<CLICK 23 for discussion question>

#### **Instructions**

At your table, discuss question.

Discuss as a class.

<CLICK 24 for letter fall>

Free and fair elections are a central pillar supporting democracy.

<CLICK 25 for letter fall>

Without free and fair elections, democracies are not legitimate.

Ever since *Citizens United*, people have organized to get corporations and big money out of politics.

#### Summarize key points

**Instructor asks** for only the summary of findings. We will finish the statement in Q. 5 with People Power group after they present their findings.

- Monied Power launched a strategic legal campaign through the courts to influence voter opinions and, hence, political campaign outcomes.
- Higher courts granted a series of 1st
   Amendment rights to wealthy people and corporations to spend and/ or contribute unlimited amounts of money to influence election outcomes and ballot measures.
- Without free and fair elections, democratic legitimacy is questionable.

#### 7. Jay Z - The War on Drugs

Another thing that happened during the 1970s was the war on drugs, also called the "new Jim Crow."

In 1971, President Nixon declared a war on drugs. In the early 1980s, President Reagan added zero tolerance policies.

#### <CLICK>

According to U.S Bureau of Justice, in 1971 the U.S. prison population was about 200,000. Nearly 40 years later in 2013, the U.S. prison population was over 2.2 million – with another 4.7 million on probation or parole.

#### <CLICK>

African Americans are 13.6 percent of the U.S. population. Yet, over 40 percent of prison inmates are black men.

Hip hop artist Jay Z explains what happened in this animated video.



What did you learn from this film?





#### RESOURCES

**New Jim Crow** 

"War on drugs" film with Jay Z http://www.drugpolicy.org/facts/ new-solutions-drug-policy/briefhistory-drug-war-0

Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (The New Press, 2010)

"Right now, we have more African-Americans behind bars or under watch of the criminal justice system than there were enslaved in 1850."

> ~ Michelle Alexander The New Jim Crow, 2011

"With only 5% of the world's population, the U.S. has more than 20% of the world's prison population – that makes us the world's largest jailer."

~ American Civil Liberties Union The Prison Crisis, 2017

#### **Instructions**



- Turn to a partner and discuss.
- After about 3 minutes, open for class discussion with challenge question

#### 8. Challenge question

 Why do racism and classism persist in our democracy?

#### **RESOURCES**

America's Private Prison Industry, Mother Jones, July/Aug 2016 http://www.motherjones.com/ politics/2016/06/history-ofamericas-private-prison-industrytimeline

U.S. Senator Cory Booker, D-NJ, CNS News interview, 8/10/15 http://www.cnsnews.com/news/ article/susan-jones/sen-bookermore-african-americans-undercriminal-supervision-all-slaves

#### Instructions and discussion guide



- Discuss at your tables or in partner teams.
- After a few minutes, open to class discussion.
- Possible answersWeaknesses in human

#### nature.

» Weaknesses exploited through programs like war on drugs and incentivized through privatization of prisons and services.

Mass incarceration has become heavily monetized industry from private prisons, servicing public prisons and jail facilities, community corrections parole and probations systems, GPS monitors, etc.

## 9. Mostly violations of civil liberties & civil rights

#### **Presentation guide**



How are the 2005 laws related to rulings in 1919 and 1922?

The 2005 laws build on, and further legitimize, corporate





takings (1922) to maximize profits (1919) <u>over</u> 5<sup>th</sup> Amendment rights of people.

#### <CLICK>

2005 Eminent domain: Supreme Court ruled that state governments could authorize corporations to use the power of eminent domain to seize land and property of real persons, in order to create new jobs and new revenues for "public use."

This eliminated the distinction between private and public use of property from the Takings Clause of the 5<sup>th</sup> Amendment, and preserved classism as "the losses will fall disproportionately on poor communities" (Justice Thomas).

#### <CLICK>

2005 Energy Policy Act: Congress exempted oil and gas activities from 8 major public health and environmental laws to maximize corporate profits.

This relieved the oil and gas industry from public accountability and social consequences of releasing toxic chemicals into fresh water supplies that support people, communities, agriculture, livestock, and wildlife, among other uses.

- Overruled key parts of major health and environmental laws.
  - » Post Yellow OVERRULED label across 1970s-1980s.

Does the PATRIOT Act of 2001, and as amended in 2011, affect democracy? Explain.

#### <CLICK>

2001 Weakens democracy by increasing power of centralized government and infringing fundamental rights of



Kelo v. City of New London, 2005 https://www.casebriefs.com/ blog/law/property/propertylaw-keyed-to-dukeminier/ eminent-domain-and-theproblem-of-regulatory-takings/ kelo-v-city-of-new-london/

Dissenting opinion: https://
en.wikipedia.org/wiki/Kelo\_v.\_
City\_of\_New\_London

Energy Policy Act, 2005 https://en.wikipedia.org/wiki/ Energy\_Policy\_Act\_of\_2005

people. Law allows government to monitor U.S. citizens by searching phones, financial records, and more to determine if person is a 'terrorist.' Law authorizes indefinite detention without trial of non-U.S. citizens as suspected terrorists. It <u>infringes</u> protected rights under the 1st, 4th, 5th, and 6th Amendments.

#### <CLICK>

2011 Weakens democracy by renewing key provisions of PATRIOT Act and authorizing indefinite detention without trial of U.S. citizens. Even after Edward Snowden exposed the government's covert surveillance of private citizens, the activities continue, but now with the government's permission. Continues to infringes protected rights under the 1st, 4th, 5th, and 6th Amendments.





#### RESOURCES

USA PATRIOT Acts, 2001, 2011 https://www.britannica.com/topic/ USA-PATRIOT-Act

https://www.lawfareblog.com/usafreedom-act-turns-two

https://www.britannica.com/biography/Edward-Snowden

#### Instructions for challenge question

- How the PATRIOT Act became law when it violates so many civil liberties?
  - » It was passed during a time when people were in shock and fear from the attack on the World Trade Towers.

Laws that infringe civil liberties often are passed when people were in shock or fear from a crisis, disaster, or war.

 For example, during the Cold War and Communist hysteria, Congress passed the Taft-Hartley Act that weakened the labor unions.

It is during times of crisis, disaster, and war



when people must be especially vigilant of our inalienable rights and civil liberties.

# How do these rulings strengthen or weaken democracy?

#### <CLICK>

2011 Weakens – Ruling reverses 45 years of progress towards wage equity among gender and race by protecting wage/gender discrimination in the workplace.

#### <CLICK>

2013 Weakens – Ruling struck down federal enforcement measures in the

Voting Rights Act of 1965, freeing 9 mostly southern states to revert to racial discrimination in state voting practices.

- Overruled critical parts of Voting Rights Act. Restricting voting rights reduced political power to defend civil rights against discriminatory policies and practices.
  - » Post Yellow OVERRULED label across Voting Rights Act.

#### <CLICK>

2014 Weakens – Ruling grants some corporate employers 1st Amendment rights to religious freedoms at expense of workers' 1st Amendment rights.

#### <CLICK>

2015 Strengthens – Ruling recognized a new fundamental right to marry for same-sex couples.

#### <CLICK>

2016 Strengthens – Ruling discourages gerrymandering by supporting the "one person, one vote" principle of the 14<sup>th</sup> Amendment Equal Protection Clause.

#### Summarize key points

- Strategic organizing and activities by large corporations under the Powell Memo shape social progress to advantage wealthy elite and corporations.
- Big Money in politics leads to elected representatives who support laws that outright infringe civil liberties, civil rights, and health rights of real





#### **RESOURCES**

Wal-Mart v. Dukes, 2011 https://www.casebriefs.com/ blog/law/civil-procedure/civilprocedure-keyed-to-yeazell/ personal-jurisdiction/wal-martstores-inc-v-dukes-2/

Shelby County v. Holder, 2013 https://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-brest/federalism-separation-of-powers-and-national-security-in-the-modern-era/shelby-county-alabama-v-holder/

Burwell v. Hobby Lobby, 2014 https://www.britannica.com/ topic/Burwell-v-Hobby-Lobby-Stores-Inc

https://ballotpedia.org/ Burwell\_v.\_Hobby\_Lobby\_ Stores,\_Inc.

Obergefell v. Hodges, 2015 https://www.britannica.com/ event/Obergefell-v-Hodges

https://ballotpedia.org/ Obergefell\_v.\_Hodges

Evenwel v. Abbott, 2016 https://en.wikipedia.org/wiki/ Evenwel\_v.\_Abbott

https://www.theusconstitution. org/litigation/evenwel-v-abbottu-s-sup-ct/

- persons to profit wealthy elite and corporations.
- Big Money in the judiciary branch and leads to a conservative Court that recognizes fundamental rights of artificial persons <u>over</u> civil liberties and civil rights of real people.
- Victories to the people are overshadowed by increasing overt infringement of human rights.

#### 10. Balance of power shifts...

**Instructor facilitates** class discussion to finish statement.

Balance of power shifted towards... the Monied Power to the point of endangering democratic legitimacy. If people's 1<sup>st</sup> Amendment rights are infringed, it makes it difficult to defend other fundamental rights.

The Monied Power that now has legal authority to challenge and overpower fundamental rights of real persons, which are being openly violated in congressional acts and court decisions. It's all "legal," but is it democracy?

#### 11. Challenge questions

#### <CLICK>

1. How did "We the People" become legally marginalized by our own government?

#### <CLICK>

2. How did the American corporation legally gain human rights and power *over* the people?

#### <CLICK>

3. What are the key policies that enabled each of these stories?





#### **Instructions**



- Turn to a partner to answer questions.
- Be ready to discuss as a class.

#### **Discussion guide**

## How did sovereign people become legally marginalized by government?

- Constitution institutionalized racism, classism, genderism.
- 13<sup>th</sup> and 14<sup>th</sup> exceptions for crime were exploited to preserve discriminatory practices through Black Codes and poll taxes, among others.
- 1886 court decision recognized corporations as equal to real persons under 14<sup>th</sup> Amendment.
- Court transformed privilege of doing business into fundamental rights for artificial persons: This infringed same rights for humans, created extreme wealth inequity, and limited the ability of state and federal governments to hold corporations accountable to laws that protect people and the environment.
- Use of discriminatory practices expanded with war on drugs and privatizing and/or heavily monetizing the prison system.
- Loss of free and fair elections led to passage of illegitimate laws that outright infringe human rights.

## How did a business model legally gain power over sovereign people?

- Court rulings gave standing to artificial persons (corporations) under Constitution and Bill of Rights.
- The 1886 court decision recognized corporations as equal to real persons under 14<sup>th</sup> Amendment, leading to corporations seeking recognition of fundamental rights through the courts.

- Court transformed the privilege of doing business into fundamental rights for artificial persons through the theory of artificial persons with human rights; i.e., the corporate personhood doctrine.
- Artificial persons usurped fundamental rights through the courts; exercising these "rights" limited the ability of state and federal governments to hold corporations accountable to laws.
- Corporations became tools for consolidating wealth and power and led to extreme inequity of wealth and political power.
- Monied Power launched successful strategic campaign with the Powell Memo to usurp series of protected 1st Amendment rights that gutted campaign finance rules and led to loss of free and fair elections.
- Democratic legitimacy is now in question with the loss of free and fair elections.

### What were the key policies that enabled each of these stories?

- Exemptions in 13<sup>th</sup> and 14<sup>th</sup>
   Amendments created the means to
   preserve discriminatory policies.
- Recognition of artificial persons as equal to natural persons under 14<sup>th</sup> Amendment resulted in artificial persons with human rights; i.e., corporate personhood doctrine.
- Money is speech (1976) unfairly advantaged wealthy persons to influence political campaigns.





#### 12. Ultimate Civics! COVER SLIDE

#### **Instructions**



- Hand out exit tickets "Our Rights, Our Future."
- Allow about 10 minutes for students to complete exercises.
- If time allows, ask students to share "take-aways," either with
- a partner or as a class.
- Collect tickets as students exit.

Find exit ticket guide right before the vocabulary section.

"We are at a crucial crossroad in the history of this nation -- and we either hang together by combating these forces that divide and degrade us or we hang separately. Do we have the intelligence, humor, imagination, courage, tolerance, love, respect, and will to meet the challenge? Time will tell. None of us alone can save the nation or world. But each of us can make a positive difference if we commit ourselves to do so."

> ~ Cornell West Race Matters, 1994





## **Who Rules? The Democracy Crisis**

#### Exit ticket guide

 Did the Civil War Amendments achieve their intended purposes? Explain.

Not yet. The exceptions for crime in the 13<sup>th</sup> and 14<sup>th</sup> Amendments led to an increase in Black Codes and arrests of African Americans. Later, a highly monetized prison system, the War on Drugs, and loss of key civil rights preserved discriminatory practices and led to laws that outright infringe fundamental rights of real people like the PATRIOT Act.

- 2. Give examples of social consequences of court rulings on campaign finance regulations post-Powell memo.
  - Loss of free and fair elections with flood of money from wealthy individuals and entities seeking to influence outcomes of political campaigns and ballot measures.
  - Uninformed voters due to elimination of truth in ads and political campaigns.
  - Increasing wealth inequity and polarization of country.
  - Loss of democracy rule by the people.
- 3. What has been the Court's role in preserving discriminatory practices?

Except for a brief period during the second civil rights movement (1950s–1970s), the Court has consistently reversed much progress on civil rights and acted as a bulwark of white colonialism, preserving racism, classism, and genderism through its interpretation of law.

# 4. What has been the Court's role in promoting corporate welfare over the common good?

The Court transformed the privilege of doing business into fundamental rights for artificial persons that infringe the same and other fundamental rights for humans. This has limited the state and federal governments' ability to hold corporations accountable to laws that protect public health and welfare, workers' rights, worker safety, and the environment. And, it has created an extreme wealth inequity that further harms the common good.

# 5. Should artificial persons be entitled to fundamental human rights? Explain.

Note: There is no right or wrong, but answer should be supported with brief argument.

For example: No, because fundamental rights are based on inalienable rights that are 'endowed by the Creator.' Sovereign people use these rights to limit the power of a centralized government and hold government – and the institutions it creates – accountable. States control corporations through charter rights in licenses to operate. However, states cannot control these business models once they usurp and exercise fundamental rights to evade laws designed to protect people and society.

## 6. What is your "take-away" from this lesson?

Consider asking volunteers to share their take-aways, once students complete exit tickets.





## Vocabulary

#### **Core Vocabulary**

**ballot measure**: proposed legislation to be voted upon by eligible voters; see initiative and referendum

**campaign finance regulations**: rules on giving and spending money, and reporting donor names

commercial speech: advertises a product or service for sale

**negative speech:** right NOT to speak, as in the right not to inform consumers of health risks of certain foods

**penumbra:** a group of rights derived, by implication, from other rights explicitly protected in Bill of Rights

**political speech:** expressions by government or candidates for office and discussion of social issues

#### **Support Vocabulary**

eminent domain: power of a government to take private property for public use

**GMO:** Genetically Modified Organism; organisms created in a lab by genetic modification or engineering

**initiative:** a type of ballot measure that allows citizens to propose a statute or constitutional amendment

**just compensation:** payment for loss of value or property after an eminent domain seizure or "taking"

poll tax: a fee required as a qualification for voting

**referendum:** a type of ballot measure that allows citizens to repeal a bill passed by the legislature

**Super PACs:** a Political Action Committee that can raise and spend unlimited amounts of money to elect or defeat political candidates



