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BEYOND *CITIZENS UNITED*: DEMOCRATIZING THE ECONOMY IN THE WAKE OF THE SMALL-DOLLAR REVOLUTION

JAY HEDGES*

INTRODUCTION

A. *Kshama and Goliath*

In November 2019, Amazon poured \$1.45 million into a local city council election in Seattle, Washington to back business-friendly candidates.¹ Of that spending, \$440,000 went to one district race against the incumbent socialist councilwoman, Kshama Sawant.² Sawant had led an effort to enact a head-tax on large corporations in the city, including Amazon, the city's largest employer.³ The measure initially passed unanimously, but after backlash from Amazon, the tax was revoked by the council.⁴ Amazon would not

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¹ See Alexander Sammon, *Seattle's Biggest Corporations Try to Buy the City Council*, AM. PROSPECT (Oct. 22, 2019), <https://prospect.org/power/seattles-biggest-corporations-try-to-buy-the-city-council>.

² See Hallie Golden, *Blow to Amazon as Seattle Socialist Looks to have Triumphed in Key Vote*, THE GUARDIAN (Nov. 9, 2019, 2:59 PM), <https://www.theguardian.com/us-news/2019/nov/09/seattle-amazon-kshama-sawant-socialist-elections>.

³ See Jared Goyette, *Is Amazon Taking Revenge on the Seattle Socialist Who Took On the Retail Giant?*, THE GUARDIAN (Aug. 5, 2019, 11:37 AM), <https://www.theguardian.com/us-news/2019/aug/05/amazon-seattle-councilwoman-kshama-sawant-re-election-bid>.

⁴ See Alana Semuels, *How Amazon Helped Kill a Seattle Tax on Business*, ATLANTIC (June 13, 2018), <https://www.theatlantic.com/technology/archive/2018/06/how-amazon-helped-kill-a-seattle-tax-on-business/562736/>.

take its chances with another term for Councilwoman Sawant.⁵ On election night, the candidate backed by Amazon, Egan Orion, led by eight percent of the vote.⁶ News outlets blared the victory whistle, declaring Amazon's defeat of socialism.⁷

Yet these declarations proved premature. Due to Washington's mail-in ballot system, it would be days before the final results were tallied.⁸ The final count showed Sawant had, in fact, surpassed her Amazon-backed opponent.⁹ When Sawant declared victory, the background banner of her speech read in large block letters, "Tax Amazon."¹⁰

How did the socialist enemy of one of the world's largest corporations seek out an electoral victory over the corporation's preferred candidate? At least some anecdotal accounts indicated that voters were disturbed by Amazon's unprecedented money dump into the election.¹¹ The refrain Sawant chose to use at her rallies, to great applause, reflected this distaste: "Seattle is not for sale!"¹² Her opponent even admitted that the Amazon donations became more of a distraction than an advantage.¹³ So, it appears that this distaste for corporate political influence, as well as Sawant's unshamedly pro-working-class message, resonated with voters.¹⁴

⁵ See Golden, *supra* note 2.

⁶ See *id.*

⁷ See Evie Fordham, *Far-Left Candidates Appear to Flop in Seattle City Council Race After Amazon Dumps Dollars*, FOX BUS. (Nov. 6, 2019), <https://www.foxbusiness.com/technology/amazon-city-council-seattle-election-results>; see also Katie Herzog, *Maybe Amazon Bought the Election—or Maybe Voters Were Sick of Sawant*, THE STRANGER (Nov. 7, 2019, 10:58 AM), <https://www.thestranger.com/slog/2019/11/07/41927073/maybe-amazon-bought-the-election-or-maybe-voters-were-sick-of-sawant>.

⁸ See Eoin Higgins, *Amazon's Major Money Dump in Seattle's City Council Election Seen as 'Dangerous and Ominous Development'*, COMMON DREAMS (Nov. 6, 2019), <https://www.commondreams.org/news/2019/11/06/amazons-major-money-dump-seattles-city-council-election-seen-dangerous-and-ominous>.

⁹ See Hannah Knowles, *Amazon Spent \$1.5 Million on Seattle City Council Races. The Socialist it Opposed Has Won*, WASH. POST (Nov. 10, 2019, 11:25 PM), <https://www.washingtonpost.com/nation/2019/11/10/amazon-spent-million-seattle-city-council-races-socialist-it-opposed-has-won/>.

¹⁰ See Evie Fordham, *Amazon vs Seattle Socialist City Councilwoman: Why She Could Have Last Laugh*, FOX BUS. (Nov. 11, 2019), <https://www.foxbusiness.com/money/socialist-seattle-city-councilwoman-kshama-sawant-amazon>.

¹¹ See Joni Batler, *How Amazon's Klutzy Politicking Backfired in Seattle*, BLOOMBERG (Nov. 14, 2019, 10:00 AM), <https://www.bloomberg.com/opinion/articles/2019-11-14/how-amazon-s-klutzy-politicking-backfired-in-seattle> (citing polls conducted before Amazon's donations that favored Amazon-friendly candidates, most of whom ended up losing their election).

¹² See Knowles, *supra* note 9.

¹³ See Batler, *supra* note 11.

¹⁴ See Jonathan Rosenblum, *Kshama Sawant Passes the Amazon Stress Test in Seattle*,

B. *The Anti-Democracy of Citizens United*

The infamous Supreme Court decision that gave Amazon the green light to spend as much money as it did in the city council election is *Citizens United v. FEC*.¹⁵ The 2010 decision made clear two constitutional concepts: (1) a corporation is to be treated like a person with constitutional rights,¹⁶ and (2) the money a corporation spends towards political ends is constitutionally protected speech.¹⁷ The ruling has been widely unpopular,¹⁸ and it exposes the dearth of democracy in our capitalist political economy.¹⁹

Citizens United increases the power of corporations over our political process.²⁰ Under current corporate governance laws, permission for corporations to behave as political actors ignores the consent of a particularly important constituency of these business entities—labor.²¹ This neglect of workers reveals three democratic crises resulting from the corporate structure in the United States,

JACOBIN (Nov. 25, 2019), <https://www.jacobinmag.com/2019/11/kshama-sawant-seattle-city-council-election-amazon> (describing the Sawant campaign's field strategy of focusing grassroots community organizing in working-class neighborhoods to turn out the vote).

¹⁵ See *Citizens United v. FEC*, 558 U.S. 310 (2010).

¹⁶ See *id.* at 312–13.

¹⁷ See *id.* at 313–14. Although corporations are still prevented from contributing directly to political campaigns, they may make independent expenditures to advocate for or against politicians without coordinating with their campaigns. See *id.* at 360.

¹⁸ See Greg Stohr, *Bloomberg Poll: Americans Want Supreme Court to Turn Off Political Spending Spigot*, BLOOMBERG (Sept. 28, 2015, 5:00 AM), <https://www.bloomberg.com/news/articles/2015-09-28/bloomberg-poll-americans-want-supreme-court-to-turn-off-political-spending-spigot> (finding that while respondents were divided on whether they agreed with rulings on abortion, gay marriage, and health care, seventy-eight of survey respondents, upset by the flood of political spending the decision unleashed, said that *Citizens United* should be overturned).

¹⁹ See Kent Greenfield, *The Stakeholder Strategy: Changing Corporations, Not the Constitution, is the Key to a Fairer Post-Citizens United World*, 26 DEMOCRACY: J. IDEAS (2012) (“Here in the United States, the law of corporate governance is among the most conservative and least democratic in the developed world.”).

²⁰ See *Citizens United*, 558 U.S. at 433 (Stevens, J., dissenting) (“[T]he [Tillman] Act [which bans all direct corporate contributions to political candidates] was . . . driven by . . . the enormous *power* corporations had come to wield in federal elections.”) (emphasis added); RICHARD D. WOLFF, *DEMOCRACY AT WORK: A CURE FOR CAPITALISM* 94 (2012) (discussing the increased concentration of political power in corporations following *Citizens United*, Wolff writes, “[t]he disparity of interests between capitalists and workers and the disparity of the concentrated resources they can and do devote to their favored positions, politicians, and parties undermine a democratic politics.”).

²¹ See Jonathan Macey & Leo E. Strine, Jr., *Citizens United as Bad Corporate Law*, 2019 WISC. L. REV. 451, 453, 462, 464–65 (2019) (pointing out how *Citizens United* loosely describes corporations as an association of persons while at the same time failing to acknowledge how employees make up the majority of this association yet have no ability to direct the speech of the corporation).

which have only intensified following *Citizens United*. First, while the political speaking-power of corporations has been substantially increased, these entities lack *legitimacy* to speak on behalf of their labor constituency.²² Second, the use of corporate profits, generated by the corporation's labor force, as the means of political speech accelerates worker *exploitation*.²³ And third, given the United States' consensus that the corporation's purpose is to maximize shareholder wealth,²⁴ greater corporate influence in the political arena increases political power to prioritize shareholders, escalating the already soaring economic and social *inequality* in the United States.²⁵ In light of these crises, the result of *Citizens United* is anti-democratic.²⁶

C. Beyond *Citizens United*

In spite of the anti-democracy exacerbated by *Citizens United*, the decision has opened the door to a particularly compelling political narrative regarding the excess of corporate power.²⁷ This narrative has proved increasingly successful in electing

²² See ISABELLE FERRERAS, FIRMS AS POLITICAL ENTITIES: SAVING DEMOCRACY THROUGH ECONOMIC BICAMERALISM 13 (Miranda Richmond Mouillot ed. trans., Cambridge Univ. Press 2017) ("Firm government today is *illegitimate*, because it represents only one of the firm's two constituent bodies.").

²³ See *infra* Subsection II.B, notes 120–148 and accompanying text.

²⁴ See STEPHEN M. BAINBRIDGE, THE NEW CORPORATE GOVERNANCE IN THEORY AND PRACTICE 53 (2008) ("[D]espite occasional academic arguments to the contrary, the shareholder wealth maximization norm . . . indisputably is the law in the United States.").

²⁵ See THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY 377 (Arthur Goldhammer, trans., Harv. Press 2014) (2013) (conducting groundbreaking empirical research that demonstrates rising wealth inequality in the United States and other Western capitalist democracies).

²⁶ See *Austin v. Mich. Chamber of Comm.*, 494 U.S. 652, 659–60 (1990) *overruled by Citizens United v. FEC*, 558 U.S. 310 (2010) ("[The state law restricting corporate political expenditures] aims at a different type of corruption in the political arena: corrosive and distorting effects of immense wealth . . . that have little or no correlation to the public's support for the corporation's political ideas."). See also Charles Douglas Lummis, *The Radicalism of Democracy*, 2 DEMOCRACY 9, 9–10 (Fall 1982) ("[Democracy] describes an ideal, not a method of achieving it. It is not a kind of government but an end of government; not a historically existing institution, but a historical project.").

²⁷ See Adam Eichen & Nick Nyhart, *Grassroots Money Beats Amazon in Seattle*, AM. PROSPECT (Nov. 15, 2019), <https://prospect.org/politics/grassroots-money-beats-amazon-in-seattle/> (Though "[c]orporate independent expenditures exceeded progressive ones in every contested council race," Amazon's favored candidates challenging progressives for Seattle City Council lost five out of six races.).

candidates who reject corporate support.²⁸ Thus, politicians are showing that they can compete in and even win elections while rejecting corporate money.²⁹

Ironically, *Citizens United* has acted as a foil against which the working class can build political power.³⁰ This political power, once achieved, should not aim merely to overturn *Citizens United*, but to get to the heart of the anti-democracy it upholds by democratizing corporations.³¹ Two corporate reforms would be effective and straightforward ways to democratize corporations: (1) Worker Ownership Funds and (2) economic bicameralism.³² These measures would redistribute power in the workplace, countering the illegitimacy, exploitation, and inequality which *Citizens United* has promoted.³³

These two corporate reforms would increase worker ownership and control of the corporations they work for. First, through Worker Ownership Funds, all workers, as shareholders, would

²⁸ See Alex Kotch, *The Verdict Is In: Rejecting Corporate Cash Wins Elections*, SLUDGE (Nov. 15, 2018, 5:48 PM), <https://readsludge.com/2018/11/15/rejecting-corporate-pacs-wins-elections-verdict/>. In the 2018 mid-term elections, thirty Democratic congressional candidates who unseated Republicans had rejected corporate Political Action Committee (PAC) money, while each candidate virtually matched or exceeded the fundraising of their corporate-friendly opponent. See *id.*

²⁹ See *id.* In recognition of this development, the Democratic National Committee made the number of individual donors, rather than the total amount of money raised, part of the qualifying criteria for the 2020 Democratic Presidential primary debates, emphasizing the breadth of a candidate's grassroots support. See Press Release, Democratic Nat'l Committee, *DNC Announces Details for The First Two Presidential Primary Debates* (Feb 14, 2019), <https://democrats.org/news/dnc-announces-details-for-the-first-two-presidential-primary-debates/>; see also Michael Whitney, *The DNC Is Putting Its Thumb on the Scales Again — This Time in the Right Direction*, INTERCEPT (Dec. 27, 2018, 7:01 AM), <https://theintercept.com/2018/12/27/dnc-primary-grassroots-fundraising/>.

³⁰ Patrick Burgwinkle, the communications director of the End Citizens United PAC, expressed the power of using *Citizens United* to raise money for candidates who oppose the ruling, explaining that “[g]etting money out of politics . . . is often a very powerful grassroots fund-raising message.” Eric Lach, *Why Famous, Powerful Presidential Candidates are Begging You for Five Dollars*, NEW YORKER (June 10, 2019), <https://www.newyorker.com/news/news-desk/why-famous-powerful-presidential-candidates-are-begging-you-for-five-dollars>.

³¹ See Greenfield, *supra* note 19 (arguing against liberal proposals to overrule *Citizens United* via a constitutional amendment declaring that corporations are no longer protected by the First Amendment).

³² See Ferreras, *supra* note 22, at 13–14 (introducing the idea of “economic bicameralism” as a solution to the anti-democracy of firms); see also Lenore Palladino, *Inclusive Ownership Funds for the United States*, ROOSEVELT INSTITUTE (May 15, 2019), <https://rooseveltinstitute.org/inclusive-ownership-funds-for-the-united-states/> (describing the potential benefits of employee ownership funds in the United States). For an argument as to why corporate reform cannot merely be “voluntary” or flow from “enlightened leadership,” see MARJORIE KELLY, *THE DIVINE RIGHT OF CAPITAL: DETHRONING THE CORPORATE ARISTOCRACY* 147–49 (2001).

³³ See *infra* Section II.

benefit from corporate profits through dividends and participate in corporate governance with the same voting rights direct shareholders currently possess.³⁴ Second, the model of “economic bicameralism” designed by Isabelle Ferreras would increase workers’ control and corporate accountability to labor.³⁵

Increased ownership and control for workers would (1) legitimize corporations as political actors granted constitutional rights, (2) mitigate exploitation by both redistributing a portion of the corporate profits to workers and giving workers a say in how those profits ought to be used, and (3) reduce inequality by increasing workers’ corporate equity and giving the diverse working-class equal standing and responsibility with current corporate boards. By gaining such a degree of ownership and control over the economic forces governing their lives, workers would see society begin to make good on its promise of democracy.

This Note will map a path forward beyond the seeming political limitations of *Citizens United*. Part I will provide an overview of *Citizens United* and its consequences on democracy. Part II will elaborate on the crises of illegitimacy, exploitation, and inequality exacerbated by *Citizens United*. And, Part III will examine two possible corporate reforms, and their ability to combat the illegitimacy, exploitation, and inequality facilitated by *Citizens United*. Finally, Part IV argues that recent developments around how political campaigns are financed reveal the political viability of these reforms.

³⁴ See generally, Susan R. Holmberg, *Who Are the Shareholders?*, ROOSEVELT INST. 8 n.2 (June 2018) (analyzing the key distinction between the rights of direct shareholders and those who invest in corporate equity through large institutional investors).

³⁵ See Ferreras, *supra* note 22, at 14. Economic bicameralism is a governing structure for companies where workers as “labor-investors” help make the strategic decisions of the corporation through a board of representatives that has equal standing with shareholders’ representatives who are the sole directors in corporations’ current “unicameral” system. *Id.* at 137.

I. BACKGROUND

A. *Citizens United*

Citizens United held that the government could not ban political speech based on the speaker's corporate identity.³⁶ The decision overturned *Austin v. Michigan Chamber of Commerce*, which held that corporations could not make independent political expenditures from their general treasury.³⁷ Instead, *Austin* had upheld the Political Action Committee (PAC) system of campaign financing outlined by the Federal Elections Commission.³⁸ Under that system, corporate PACs had specific regulations on funding.³⁹ For instance, only certain designated corporate constituents could contribute to the fund, and the political purpose of the PAC had to be known to contributors beforehand.⁴⁰ Thus, only consciously made donations to the fund could be used for the fund's express political purpose. But *Citizens United* held that banning the use of a corporation's general treasury for independent political expenditures violated the First Amendment's enshrined freedom of speech.⁴¹

One of the key issues the Court needed to address to arrive at its decision was the applicability of First Amendment free speech guarantees to corporations. Yet the Court weakly defended its

³⁶ *Citizens United v. FEC*, 558 U.S. 310, 315 (2010).

³⁷ *Id.*; *Austin v. Mich. State Chamber of Comm.*, 494 U.S. 652, 654-55 (1990).

³⁸ *See Austin*, 494 U.S. at 669 (Brennan, J. concurring) (“[T]he statute merely requires those corporations wishing to make independent expenditures in support of candidates to do so through segregated funds or political action committees (PAC’s) rather than directly from their corporate treasuries.”).

³⁹ *See id.* at 657 (“For example, the statute required the corporation to appoint a treasurer for its segregated fund, keep records of all contributions, file a statement of organization containing information about the fund, and update that statement periodically.”).

⁴⁰ *See id.* (“[T]he corporation was permitted to solicit contributions to its segregated fund only from ‘members,’ which did not include persons who merely contributed to or indicated support for the organization.”).

⁴¹ *See generally, Citizens United*, 558 U.S. at 349, 361-62 (“This case . . . is about independent expenditures When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures[] . . . then surely there is cause for concern The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical preelection period is not a permissible remedy. . . . [Accordingly, t]he regulatory mechanism here, based on speech, contravenes the First Amendment.”).

commitment to corporate personhood through a series of string citations listing previous decisions that had applied First Amendment protections to corporations.⁴² One peculiar feature of the Court's leap in logic is that the majority of the cases it cites as support for protecting *all* corporations' freedom of speech involved *media* corporations, which arguably implicates the First Amendment's freedom of the press in addition to free speech.⁴³ Two legal scholars point out that Justice Kennedy's argument here is a syllogism.⁴⁴ The authors write:

The First Amendment protects the press; the press often uses the corporate form; therefore, the First Amendment protects the political speech of corporations. . . . [B]y adopting the financial advantages of the corporate form, media companies have now, through *Citizens United*, extended political speech protections to commercial, nonmedia corporations.⁴⁵

Next, the Court rejected the reasons in *Austin* for upholding regulation of corporate political spending: (1) anti-distortion, (2) anti-corruption, and (3) shareholder protection.⁴⁶ The Court in *Austin* held that the use of a corporation's general treasury money was a form of distortion because there was no way to know the actual

⁴² See *id.* at 342 ("The Court has recognized that First Amendment protection extends to corporations. [*First Nat'l Bank v. Bellotti*, [435 U.S. 765], at 778, n. 14, . . . (citing *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85 . . . ; *Time, Inc. v. Firestone*, 424 U.S. 448 . . . ; *Doran v. Salem Inn, Inc.*, 422 U.S. 922 . . . ; *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 . . . ; *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 . . . ; *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 . . . ; *New York Times Co. v. United States*, 403 U.S. 713 . . . ; *Time, Inc. v. Hill*, 385 U.S. 374 . . . ; *New York Times Co. v. Sullivan*, 376 U.S. 254 . . . ; *Kingsley Int'l Pictures Corp. v. Regents of Univ. of N. Y.*, 360 U.S. 684 . . . ; *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 . . .); see, e.g., *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 . . . ; *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727 . . . ; *Turner*, 512 U.S. 622 . . . ; *Simon & Schuster*, 502 U.S. 105 . . . ; *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 . . . ; *Florida Star v. B. J. F.*, 491 U.S. 524 . . . ; *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 . . . ; *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 . . . ; *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 . . . ; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 . . . ; *Greenbelt Cooperative Publishing Assn., Inc. v. Bresler*, 398 U.S. 6 . . .").

⁴³ See *id.* at 342-43; see also Robert Sprague & Mary Ellen Wells, *The Supreme Court as Prometheus: Breathing Life into the Corporate Supercitizen*, 49 AM. BUS. L.J. 507, 536-37 (2012).

⁴⁴ See Sprague & Wells, *supra* note 43, at 536-37.

⁴⁵ *Id.*

⁴⁶ See *Citizens United*, 558 U.S. at 348-63.

popularity or support for the promoted political position.⁴⁷ Responding to this anti-distortion interest, *Citizens United* asserted that the “First Amendment confirms the freedom to think for ourselves,” and, thus, regardless of the veracity of information being offered, people should sort out the truth themselves.⁴⁸

Austin also expressed concern that increased corporate political expenditures for candidates could yield corruption or its appearance.⁴⁹ However, *Citizens United* found that the prohibition of corporate donations in the form of direct campaign contributions was a sufficient guard against the *quid pro quo* corruption of which *Austin* had warned.⁵⁰

Austin further noted that some minority shareholders, whose money would be used for these political purposes, might disagree with the ideas being advanced.⁵¹ Regarding this government interest in protecting shareholders, *Citizens United* offered two rebuttals.⁵² First, the Court asked, if minority shareholders in *media* corporations should not be allowed to dictate the content of the media, why should minority shareholders of *nonmedia* corporations be allowed to dictate the political actions of the corporation?⁵³ Second, the Court asserted that any abuse of corporate spending may be corrected through the procedures of corporate democracy, where shareholders can remove the directors and elect new ones.⁵⁴

⁴⁷ See *Austin v. Mich. State Chamber of Comm.*, 494 U.S. 652, 659–60 (1990).

⁴⁸ *Citizens United*, 558 U.S. at 356. This idea of thinking for oneself and allowing all messages regardless of truth or the time of day has been promoted by the “marketplace of ideas” concept. See Jedidiah Purdy, *Beyond the Bosses’ Constitution: The First Amendment and Class Entrenchment*, 118 COLUM. L. REV. 2161, 2164 (2018).

⁴⁹ See *Austin*, 494 U.S. at 658.

⁵⁰ See *Citizens United*, 558 U.S. at 357 (arguing that independent expenditures, political spending on behalf of but without coordination from a campaign, do not give rise to the same sense of obligation on the candidate to favor the corporation’s interests once in office); *but see*, ZEPHYR TEACHOUT, CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN’S SNUFF BOX TO *CITIZENS UNITED* 232 (2014) (criticizing this unreasonable narrowing of the definition of corruption).

⁵¹ See *Austin*, 494 U.S. at 673 (Brennan, J., concurring).

⁵² See *Citizens United*, 558 U.S. at 361-62.

⁵³ See *id.* at 361.

⁵⁴ See *id.* at 361-62.

B. *The State of Democracy in a Post-Citizens United World*

Following *Citizens United*, corporations can spend virtually unlimited money from their general treasury to ensure the candidates friendliest to their interests are elected.⁵⁵ Meanwhile, some of these same corporations could pay little to no taxes, as their workers struggle to get by.⁵⁶ Even the tax cuts of 2017⁵⁷—which saved corporations hundreds of billions of dollars and had been justified by the promise that the savings would be reinvested in workers—merely enriched the already well-off through stock buybacks.⁵⁸ The resulting sense of unfairness distresses working-class voters.⁵⁹

Uncoincidentally, the United States has historically suffered from relatively low voter turnout.⁶⁰ Moreover, voter participation

⁵⁵ See David G. Yosifon, *The Public Choice Problem in Corporate Law: Corporate Social Responsibility after Citizens United*, 89 N.C. L. REV. 1197, 1205–06 (2011) (describing corporate influence in the context of “regulatory capture,” where regulatory bodies end up being influenced by the very corporations they were designed to rein in). Many corporations funnel their political spending through super PACs, outside groups aligned with the values of the corporation, in order to advance their political interest. See *Corporate Contributions to Outside Groups*, OPENSECRETS.ORG, <https://www.opensecrets.org/outside-spending/corporate-contributions?cycle=2018> (last visited Jan. 13, 2020).

⁵⁶ See Stephanie Saul & Patricia Cohen, *Profitable Giants Like Amazon Pay \$0 in Corporate Taxes. Some Voters Are Sick of It*, N.Y. TIMES (Apr. 29, 2019), <https://www.nytimes.com/2019/04/29/us/politics/democrats-taxes-2020.html> (Sixty of the Fortune 500 companies, including Amazon, paid \$0 in federal income tax on \$79 billion of corporate income, meanwhile workers at some of these zero-tax corporations are eligible for public assistance.).

⁵⁷ Tax Cuts and Jobs Act of 2017, Pub. L. No. 115–97, 131 Stat. 2054.

⁵⁸ See Jim Tankersley & Matt Phillips, *Trump’s Tax Cut Was Supposed to Change Corporate Behavior. Here’s What Happened*, N.Y. TIMES (Nov. 12, 2018), <https://www.nytimes.com/2018/11/12/business/economy/trumps-tax-cut-was-supposed-to-change-corporate-behavior-heres-what-happened.html> (Payouts to shareholders were projected to have increased twenty-eight percent from 2017 to 2018, up to a total of \$1.3 trillion in the form of dividends and buybacks.); *The JUST Capital Rankings on Corporate Tax Reform*, JUST CAP., <https://justcapital.com/reports/the-just-capital-rankings-on-corporate-tax-reform/> (last updated December 10, 2018) (Only six percent of the 2018 corporate tax windfall went to workers, half of which took the form of a one-time bonus, while fifty-six percent of the windfall was allocated to shareholders.).

⁵⁹ See Saul & Cohen, *supra* note 56 (reporting on interviews with workers in Akron, Ohio, disturbed by the disparate tax treatment between profitable corporations and themselves); FERRERAS, *supra* note 22, at 3 (describing the increasing gap between workers’ expectations of democratic agency and their voiceless experience at work).

⁶⁰ See Drew DeSilver, *In Past Elections, U.S. Trailed Most Developed Countries in Voter Turnout*, PEW RSCH. CTR. (Nov. 3, 2020), <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/> (55.7% of the voting-age population participated in the 2016 general election, ranking the United States among the bottom of peer countries.). Although the 2020 general election boasted the highest voter turnout since 1900, with an estimate of over sixty-five percent of the voting-age population participating, the United States’ record-high turnout still falls

is positively correlated with income: the poorer a person is, the less likely they are to vote.⁶¹ For instance, in presidential elections from 1945 to 2016, voter turnout of the top half of income earners in the United States ranged from twelve to twenty times higher than the turnout of the bottom half of income earners.⁶²

Studies have shown that increased economic inequality severely depresses political engagement and interest among all but the most affluent citizens.⁶³ One explanation of the relationship between inequality and democratic participation is that economic inequality enhances the relative political power of the rich, who in turn set the rules of debate, thereby stunting the range of political ideas available to the public.⁶⁴ This limited set of politically “feasible” ideas comes at the cost of pursuing redistributive measures, which may be of particular interest to working-class citizens.⁶⁵ Since *Citizens United*’s effect was to further increase the relative political power of the shareholders and directors who control corporations—predominately white affluent citizens⁶⁶—it follows that the most likely outcome of the decision is the continued depression of democratic engagement among working people.⁶⁷

Discouraged from democratic participation in the political arena, yet imbued with democratic ideals and a desire for fairness, corporate workers also face a “cognitive dissonance” in their jobs, where they are excluded from the decision-making process.⁶⁸ The

behind many of its peers. See James Palmer & Audrey Wilson, *Historic U.S. Turnout Still Lags Behind Major Democracies*, FOREIGN POL’Y (Nov. 3, 2020, 8:51 PM), <https://foreign-policy.com/2020/11/03/historic-united-states-voter-turnout-2020-election-behind-other-democracies-global/>.

⁶¹ See THOMAS PIKETTY, CAPITAL AND IDEOLOGY 741 fig.14.8 (Arthur Goldhammer trans., 2020) (showing the percentage difference of turnout among the top fifty percent of income earners and the bottom fifty percent since 1945); Randall Akee, *Voting and Income*, ECONOFACT (Feb. 7, 2019), <https://econofact.org/voting-and-income> (showing less than half of families in the lowest income category participated in the 2016 election while over eighty percent of families annually earning more than \$150,000 voted).

⁶² See PIKETTY, *supra* note 61, at 741 fig.14.8.

⁶³ See Frederick Solt, *Economic Inequality and Democratic Political Engagement*, 52 AM. J. POL. SCI. 48 (2008); Michael Ritter & Frederick Solt, *Economic Inequality and Campaign Participation*, 100 SOC. SCI. Q. 678 (2019) (finding that where inequality is higher, participation in political campaigns is lower across incomes).

⁶⁴ See Solt, *supra* note 63, at 57.

⁶⁵ See *id.*

⁶⁶ See Holmberg, *supra* note 34, at 4.

⁶⁷ See FERRERAS, *supra* note 22, at 3 (describing the contradiction between capitalism and democracy and asserting that the United States, as made evident in *Citizens United*, has chosen more capitalism over more democracy).

⁶⁸ *Id.*

lack of a democratic voice becomes even more pronounced when the political sphere, in which most workers are able to participate, has increasingly been dominated by corporations—the same entities which deny them democratic agency in their work life.⁶⁹

Thus, the resonance of the political narrative against *Citizens United* lies not in legal arguments over speech, but in the story about power in our country, increasingly concentrated at the top.⁷⁰ This narrative has already built a political movement in opposition to the defunct power structure of our system.⁷¹ But the key to the advancement of this movement will be the articulation of the democratic crises of increased corporate political power.⁷² This articulation will require stretching and at times escaping our dominant liberal paradigm of political discourse.

II. THE CRISES OF CORPORATIONS AS POLITICAL ACTORS: ILLEGITIMACY, EXPLOITATION, AND INEQUALITY

Liberal discourse has developed a sophisticated way of describing and criticizing state domination.⁷³ But while the “liberal lexicon” provides ample language to rail against a despotic state, this political philosophy has failed to develop language around economic domination.⁷⁴ This deficiency of language is largely due to

⁶⁹ See *id.* at 3–4 (“People raised as citizens in a democracy aspire to have some agency over the course of their own lives, and the past decades have shown them with aching clarity that this aspiration to agency is little more than a dream.”).

⁷⁰ See K. Sabeel Rahman, *Corporate Power and the Unmaking of American Democracy*, AM. PROSPECT (May 16, 2018), <https://prospect.org/infrastructure/corporate-power-unmaking-american-democracy/>.

⁷¹ See Eichen & Nyhart, *supra* note 27 (“Voters are now increasingly wary of how candidates obtain their money—and from whom. The rise of No-PAC pledges, for example, has primed voters to be skeptical of those who seek out or receive corporate-backed assistance.”).

⁷² See SAMUEL BOWLES & HERBERT GINTIS, *DEMOCRACY & CAPITALISM: PROPERTY, COMMUNITY, AND THE CONTRADICTIONS OF MODERN SOCIAL THOUGHT* 162 (1987).

⁷³ See *id.* at 13 (“Liberalism is in principle the inveterate enemy of the despot.”).

⁷⁴ See *id.* at 15–16. This enlightenment-era liberal ignorance of the consequences and illegitimacy of private power is on full display as the Supreme Court repeatedly emphasizes restraining government power while failing to recognize the private despotic potential wielded by massive corporations imbued with increased political power as a result of its ruling. See *Citizens United v. FEC*, 558 U.S. 310, 313, 347, & 361-62 (2010). *But see id.* at 433 (Stevens, J., dissenting). In his dissent, Stevens briefly mentions that the original intent of a corporate ban on political contributions in the Tillman Act was a fear of corporate power. However, while Stevens makes the argument vehemently that “it is the

the arbitrary partition liberal thought erects between “public” politics and “private” economics.⁷⁵ “Liberal theory thus renders the power of capital invisible: democrats cannot assail economic power within liberal theory because they lack the tools for making such power visible.”⁷⁶

A few linguistic tools useful in exposing “the invisible hand” of economic domination are the concepts of legitimacy, exploitation, and inequality.⁷⁷ Legitimacy is a familiar idea in liberal discourse,⁷⁸ but it suffers from the same arbitrary public-private partition that hampers much of liberal discourse generally.⁷⁹ Rarely, if ever, is the authority of corporations questioned as illegitimate; yet, if we applied the same considerations we give state governments to economic entities, there is no doubt we would find corporations to be despotic.⁸⁰

Moreover, emphasis on choice and consent in liberal discourse displaces any intellectual foundation for considering material exploitation.⁸¹ Since employees agree to the contract under which they are employed, how could they be exploited? But this line of

shareholders, as residual claimants, who are effectively footing the bill,” he fails to articulate a need to protect workers as well. *See generally id.* at 475–78.

⁷⁵ *See* BOWLES & GINTIS *supra* note 72, at 65–66. *But see id.* at 18 (“Marxian political theory, unlike liberalism, is not hampered by incoherent partitions.”). For an argument that corporations ought to be understood as entities that cannot be relegated to either a strictly public or private realm, see David Ciepley, *Beyond Public and Private: Toward a Political Theory of the Corporation*, 107 AM. POL. SCI. REV. 139 (2013).

⁷⁶ BOWLES & GINTIS, *supra* note 72 at 65–66. While much of this Note relies at times on a Marxist description of the problem (i.e. surplus-value and exploitation) and a democratic socialist solution to that problem (i.e. democratizing the economy), the aim is to show how these principles will prove to be quite persuasive and popular in the United States’ political climate in the twenty-first century. In this sense, it is helpful to understand liberalism and Marxism each as “systems of communication, establish[ing] rules as to how social reality will be represented in terms of its vocabulary.” *Id.* at 15. Insofar as Marxian communication advances a deepening of democracy in the economy, this Note utilizes it; insofar as a Marxian framework is “theoretically anti-democratic in the same sense that any political philosophy [is] that fails to conceptualize the threat of authoritarianism, and the centrality of privacy and individual liberty to human emancipation,” this Note seeks to maintain the liberal scaffolding. *Id.* at 20.

⁷⁷ *See generally id.* at 15–16 (“In short, [Marxism and Liberalism] are discourses whose most fundamental orientation concerning structure and action in social life are revealed by the customary usage of key terms.”); *see also* C. DOUGLAS LUMMIS, *RADICAL DEMOCRACY* 18–19 (1996) (explaining the concept of “legitimacy”).

⁷⁸ *See* WOJCIECH SADURSKI, *EQUALITY AND LEGITIMACY* 27 (2008) (“There is an important strand in liberal thinking that links legitimacy with the consent of the governed.”).

⁷⁹ *See* BOWLES & GINTIS *supra* note 72 at 65 (“Liberal political theory, which deals with power, does not deal with the economy, while liberal economic theory ignores politics.”).

⁸⁰ *See* FERRERAS, *supra* note 22, at 3 (explaining how the original Greek and Aristotelian definition of despotism is applicable to modern business corporations).

⁸¹ BOWLES & GINTIS *supra* note 72, at 15–16.

thought ignores the coercive circumstances workers find themselves in when entering employment contracts, where the alternative to gainful employment is the deprivation of material needs.⁸²

Furthermore, focusing on individuals and their nominal political equality prevents a reckoning with the massive social and economic inequality eroding our society.⁸³ One ought to recall what Dr. Martin Luther King, Jr. said about equality near the end of his life as he led the Poor People's Campaign: "Now our struggle is for genuine equality, which means economic equality. For we know that it isn't enough to integrate lunch counters. What does it profit a man to be able to eat at an integrated lunch counter if he doesn't have enough money to buy a hamburger and a cup of coffee?"⁸⁴

Thus, examining illegitimacy, exploitation, and inequality beyond what liberalism has been able to offer is necessary to demystify "the most powerful form of collective organization in contemporary capitalism—the modern business corporation"⁸⁵

A. Illegitimacy: On Whose Behalf May the Corporation Speak?

An uncritical assertion that corporations should be granted constitutional rights as legal persons fails to acknowledge the democratic legitimacy those rights should entail. The corporation is a legally constructed entity made up of various internal stakeholders (investors, directors, managers, and workers), the actions of whom have serious consequences in the lives of external stakeholders (neighbors, families, municipalities, and the environment).⁸⁶ Thus, conceptualizing, as dominant jurisprudence has,

⁸² See G. A. Cohen, *Robert Nozick and Wilt Chamberlin: How Patterns Preserve Liberty*, in JOHN ARTHUR & WILLIAM H. SHAW, *JUSTICE AND ECONOMIC DISTRIBUTION* at 250–60 (1978) (demonstrating the coercive nature of an unequal society by refuting Robert Nozick's defense of a libertarian society).

⁸³ See LUMMIS, *supra* note 77, at 18–19 ("Liberal democrats argue that there is nothing undemocratic about a big economic gap between rich and poor so long as it is guided by fair rules: equal opportunity, elections, certain guaranteed legal rights, and so forth. But wiser theorists have taught us that extreme economic inequality is not compatible with democracy.").

⁸⁴ Martin Luther King, Jr., Address before American Federation of State, County, and Municipal Employees (AFSCME), Memphis, Tennessee, (Mar. 18, 1968), in MARTIN LUTHER KING, JR., "ALL LABOR HAS DIGNITY" 378, 388 (Michael K. Honey, ed., 2011) (ebook).

⁸⁵ BOWLES & GINTIS, *supra* note 72, at 16.

⁸⁶ See Lenore Palladino, *Who Owns Corporations?*, 11 BOS. REV. F. 124, 126–27 (2019).

the corporation as an individual is both logically fallacious and realistically absurd. The corporation is best considered a public company, or, better yet, the *public's* company.⁸⁷ Few “individuals” exert as much control as corporations over the lives of everyday citizens.⁸⁸ Yet, in spite of the corporation’s hyper-communality, the decisions of a corporation are governed by a limited group of people, motivated by an even more limited set of concerns, namely profit.⁸⁹ The lack of representation on the decision-making body of constituencies that comprise a corporate-community raises the question of whether corporations, as currently construed, are illegitimate political actors.⁹⁰

One constituency of a corporation completely ignored by the Court in *Citizens United* is the labor force.⁹¹ This lack of concern for workers in *Citizens United* reveals a serious issue as to a corporation’s legitimacy to “speak” politically.⁹² The ability to speak, and be heard when speaking, is a form of power. Thus, it is important to recognize that *Citizens United* did not merely grant speech rights, but ultimately distributed power to corporations.⁹³

It is worth acknowledging here recent criticism of the confusion between the corporation and the firm. See FERRERAS, *supra* note 22, at 95–98. Ferreras introduces the critique of *Reductio ad Corporationem*, the idea that the corporation, as the legal structure created to facilitate capital investments, has been confused with and has erased the idea of the firm, where both labor and capital combine to accomplish some human endeavor. *Id.* While acknowledging the importance and utility of this distinction for developing a “political theory of the firm,” this Note continues to conflate the corporation with the firm. This is because U.S. legal treatment of corporations has rather uncritically treated these concepts mostly the same (or has not acknowledged the firm aspect of corporations). In attempting to highlight the labor factor ignored in the treatment of corporations as political actors, this Note deliberately uses the term corporation with the intent of including the labor side of the firm in this term.

⁸⁷ See KELLY, *supra* note 32, at 145 (“The corporation is a human community, and like the larger community of which it is a part, it is best governed democratically.”).

⁸⁸ See *id.* at xi (“This massive concentration gives the wealthy virtual sovereignty over both our economic and political systems.”).

⁸⁹ See JAMIN B. RASKIN, *OVERRULING DEMOCRACY* 166 (2003) (pointing out how no corporate constituency other than shareholders has a say in the decisions made by corporations).

⁹⁰ See KELLY, *supra* note 32, at 72.

⁹¹ While the majority opinion fails to give workers even fleeting attention, Justice Stevens mentions employees in a brief aside along with customers as those who have no input on what the corporation may say politically. See *Citizens United v. FEC*, 558 U.S. 310, 467 (2010) (Stevens, J., dissenting).

⁹² See Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?* 124 HARV. L. REV. 83 (2010). While Bebchuk and Jackson putatively seek to address this question, the authors give no consideration to the interests of workers and instead explore the divergent interests of management and shareholders. See *id.* at 90.

⁹³ See andré d. p. cummings, Steven A. Ramirez, & Cheryl L. Wade, *Toward a Critical Corporate Law Pedagogy and Scholarship*, 92 WASH. UNIV. L. REV. 397, 407–18 (2014)

The very key to claiming *Citizens United* harms democracy is in exposing its lopsided distribution of speaking power and the illegitimacy of that power.⁹⁴ *Citizens United* gave substantial political power to corporations whose governing structure forsakes the input, let alone consent, of one of its most important constituencies.⁹⁵

Legitimacy, however, is a keystone of Western democracy.⁹⁶ Since a government acts on behalf of its citizens, democratically legitimate governments must adhere to a process by which those citizens voice their preferences.⁹⁷ When people are denied access to these political procedures, the sovereign body is being undemocratic and therefore acting illegitimately.⁹⁸

If the reader will allow for some indulgence in American Revolutionary folklore for analogy, let us consider the Boston Tea Party in terms of the United States' tradition of intolerance for illegitimate governance.⁹⁹ The colonial era qualm with British rule was

("[*Citizens United*] represents a massive transfer of political power from ordinary citizens to the CEOs of the most colossal capital aggregations in the history of the world.")

⁹⁴ See KELLY, *supra* note 32, at 72 (quoting FRANCIS FUKUYAMA, *END OF HISTORY AND THE LAST MAN* 15 (Freedom Press 1st ed. 2006) (1992)) ("All regimes capable of effective action must be based on some principle of legitimacy.")

⁹⁵ See Isabelle Ferreras, *Lumping Workers in with Other Stakeholders Obscures Reality*, BOS. REV. (Oct. 2, 2019), <http://bostonreview.net/forum/american-corporation-crisis%E2%80%94lets-rethink-it/isabelle-ferreras-shareholders-versus-stakeholders> (arguing that workers are "labor investors" and should have equal control as capital-investors in corporations).

⁹⁶ See KELLY, *supra* note 32, at 113 (comparing the denunciation of legitimacy claimed by shareholders' "wealth privilege" to John Locke's discrediting the legitimacy claimed by royalty's "monarchical privilege"); FERRERAS, *supra* note 22, at 122 (explaining how the English Revolution's resulting bicameral representative system—the House of Lords and the House of Commons—was conditioned on democratic legitimacy via a class compromise between the landed aristocracy and the property-less commoners). Democratic legitimacy has even played an important role regarding whether a political community is "recognized" as a state at the international level. See Sean D. Murphy, *Democratic Legitimacy and the Recognition of States and Governments*, 48 INT'L & COMP. L.Q. 545, 580 (1999).

⁹⁷ See RONALD DWORIN, *IS DEMOCRACY POSSIBLE HERE?* 97 (2006) ("A legitimate government must treat all those over whom it claims dominion not just with a measure of concern but with *equal* concern.") (emphasis in original); see also SADURSKI, *supra* note 78, at 42-43 (discussing how majority rule as a core feature of democratic procedure must be conditioned upon the political equality of all citizens).

⁹⁸ See KELLY, *supra* note 32, at 84 (comparing the evolution of *political* sovereignty from monarchies to truly universal suffrage, to the stunted development of *economic* sovereignty which has remained in the hands of stockholders—a financial aristocracy).

⁹⁹ See Marjorie E. Kornhauser, *Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America*, 50 BUFF. L. REV. 819, 861 (2002). For the British equivalent, see FERRERAS, *supra* note 22, at 123 (describing the establishment of the House of Commons and the House of Lords as William of Orange's attempt to reconcile two legitimate claims for governing power: the people and the land).

popularized in the phrase “no taxation without representation.”¹⁰⁰ In the Founders’ minds, the colonies’ lack of political representation in British Parliament meant they did not consent to the taxes being levied against them.¹⁰¹ England, nevertheless, imposed these taxes, fueling the Founders’ charge that the British Crown was an illegitimate sovereign and inciting the revolutionary rage that led to tea being dumped into the Boston Harbor.¹⁰²

Likewise, today’s workers are generating value for corporations without being represented in the decision-making process of the corporation.¹⁰³ Since the Supreme Court distributed substantial political speaking power to corporations, the arbitrary division of political and economic realms upheld by liberal theory has started to crumble under the reality of *Citizens United*’s consequences.¹⁰⁴ That which is economic can no longer pretend to be apolitical.¹⁰⁵ Yet the Court fails to even investigate the definition of a corporation, let alone whether the corporation’s speaking power is legitimate.¹⁰⁶

The Court’s silence regarding a corporation’s legitimacy, though reflective of mainstream corporate theory today, ignores a public debate regarding the legitimacy of these legal entities that occurred in an earlier period of the country’s history.¹⁰⁷ The rise of the corporate instrument shifted public policy focus on legitimate public government power to the legitimacy of the (increasingly less

¹⁰⁰ Grant Dorfman, *The Founders’ Legal Case: No Taxation without Representation versus Taxation No Tyranny*, 44 HOUS. L. REV. 1377, 1378 (2008).

¹⁰¹ See *id.* at 1401.

¹⁰² See Kornhauser, *supra* note 99, at 840. Perhaps the modern equivalent to the dramatic outrage of the Boston Tea Party would be workers hurling cushioned rolling chairs out of the windows of a corporate boardroom.

¹⁰³ See KELLY, *supra* note 32, at 153 (quoting democratic theorist Robert Dahl, “laws cannot rightfully be imposed on others by persons who are not themselves obliged to obey those laws.”).

¹⁰⁴ See FERRERAS, *supra* note 22, at 161.

¹⁰⁵ See *id.* at 161 (“The unsteady balance once achieved by our capitalist democracies, in which democracy was assigned to the political arena and capitalism to the economy – cannot be sustained much longer.”).

¹⁰⁶ Justice Stevens briefly raises this question in the dissent, “It is an interesting question ‘who’ is even speaking when a business corporation places an advertisement that endorses or attacks a particular candidate.” *Citizens United v. FEC*, 558 U.S. 310, 467 (2010) (Stevens, J., dissenting). Stevens argues that neither consumers, employees, nor shareholders, could be said to be speaking since these constituents are removed from the day-to-day decision making. *Id.*

¹⁰⁷ See JAMES WILLARD HURST, *THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES 1780–1970*, at 59 (1970).

private) affairs of these business enterprises.¹⁰⁸ James Willard Hurst, who traced the history and development of public sentiment of corporate legitimacy, argues that the legitimacy of powerful institutions is directly related to the institution's social utility and social responsibility.¹⁰⁹ The social utility of an institution establishes its legitimacy by the degree to which the public recognizes the institution as useful to an end other than its own conservation.¹¹⁰ Legitimacy conferred via responsibility requires that a powerful institution be "accountable to some judgement other than that of the power holders."¹¹¹

Thus, from the 1880s to 1930s, the desire for economic growth legitimized the corporate form through its utility, and, in the minds of lawmakers, even justified limiting the government's ability to intervene in the corporation's affairs.¹¹² The other avenue of legitimacy—responsibility—remained subordinated to corporate utility until the 1920s; and over the twentieth century the legislative means of enhancing the responsibility of corporations was abdicated to two self-regulating concepts for holding corporate power accountable: the market and individual self-interest.¹¹³ But this imagined balance of legitimacy imposed by the market has failed to hold.

Today, under mainstream corporate law theory, shareholders give the corporation authority to speak through its elected board of directors.¹¹⁴ And, according to shareholder primacy theorists, the most important purpose of a corporation is to maximize profits for its shareholders.¹¹⁵ Thus, under the concept of shareholder primacy, corporations have the "legitimacy" to exercise their political speaking-power because they are loosely governed by their shareholders.¹¹⁶ Upon a critical look, however, this legitimacy begins to unravel, just as the Founding Fathers' flawed idea of legitimacy was limited to the "universality" of white male land-owner

¹⁰⁸ *See id.* at 59–60.

¹⁰⁹ *See id.* at 58.

¹¹⁰ *See id.*

¹¹¹ *See id.*

¹¹² *See id.* at 62.

¹¹³ *See id.* at 75–76, 82–83 (the idea being that external pressures of the market and the self-interest of profit-maximizing shareholders would keep corporate power in check).

¹¹⁴ *See* BAINBRIDGE, *supra* note 24, at 54.

¹¹⁵ *See* Palladino, *supra* note 86, at 124.

¹¹⁶ *See* HURST, *supra* note 107, at 58; Palladino, *supra* note 86, at 128.

suffrage.¹¹⁷ Why should society accept shareholders as the only necessary stakeholder whose input authorizes and legitimizes corporations to speak politically?¹¹⁸

Thus, the Supreme Court, by unfettering corporations' ability to exercise political speaking power, failed to address the illegitimacy of such speech under current corporate law.¹¹⁹ High time has come to recognize the need for corporations to become democratically legitimate institutions. Along with this recognition, a better understanding of how workers give rise to the corporation's ability to speak is essential.

B. Exploitation: Who Generated the Speaking Power?

Workers are the key to a corporation's ability to turn a profit.¹²⁰ When that same profit can be used to advocate for policies and political candidates detrimental to these workers' interests, there is a democratic crisis of exploitation.¹²¹ The way to resolve the issue is not by taking away the speaking power of corporations but by democratizing their governance.¹²²

The concept of exploitation is mostly foreign in liberal discourse due to an emphasis on consent,¹²³ but "material exploitation . . . is a matter of arithmetic, not of conviction[.]"¹²⁴ This "arithmetic" of

¹¹⁷ See KELLY, *supra* note 32, at 84 (explaining how "[t]he growth of democracy" went "from the king, to the aristocracy to propertied white males, to unpropertied white makes, to black males, and finally to women").

¹¹⁸ See *id.* at 84-85 (arguing that just as political sovereignty has been extended beyond the propertied class, economic sovereignty ought to extend beyond the wealthy, citing that "[t]he wealthiest [ten] percent of households" holds a majority of corporate stock and "thus have more vot[ing]" power).

¹¹⁹ See FERRERAS, *supra* note 22, at 3 (discussing how the "Supreme Court's *Citizens United* ruling declared that corporations are to be considered . . . people with the right to free speech[.]" thus the Supreme Court "cho[se] more capitalist despotism and less democracy"); see also, generally, *Citizens United v. FEC*, 558 U.S. 310 (2010).

¹²⁰ See WOLFF, *supra* note 20, at 79.

¹²¹ See *id.* at 94; FERRERAS, *supra* note 22, at 13.

¹²² See Greenfield, *supra* note 19.

¹²³ Though liberalism does reject an individual's ability to "consent" to slave labor, its use of consent as a way to obscure the coercive relationship between workers and their employers is an "oversimplification." David Ellerman, *The Case for Workplace Democracy*, in COUNCIL DEMOCRACY: TOWARDS A DEMOCRATIC SOCIALIST POLITICS 210-11 (2018).

¹²⁴ BOWLES & GINTIS, *supra* note 72, at 15-16.

exploitation is important for developing an argument for workers' rights to their workplace. A dive into Marxian political economics will help articulate this concept.

Material exploitation concerns the concept of surplus-value¹²⁵—the additional value, or profit, created at the end of the production process.¹²⁶ By observing the totality of the production process, or the circulation of capital, Karl Marx points out a peculiarity with the final result.¹²⁷ If, in typical market conditions, exchanges are made for equivalent values, where does the capitalist's profit come from?¹²⁸ After debunking a few of the notions liberal economic theory upholds as the source of this surplus-value (like buying low and selling high)¹²⁹ Marx explains that, in reality, surplus-value is derived from the exploitation of human labor.¹³⁰

To illustrate, when setting out a business endeavor, the capitalist uses money to buy or rent all the necessary machinery, materials, space, and labor to create a commodity.¹³¹ At the end of the business process, should not the value of the commodity simply equal the cost of all its inputs?¹³² Yet at the end of the process, after paying for all the costs of production and after the capitalist sells the commodities, realizing their value, the capitalist winds up with more money than they started with.¹³³

Marx then points out that labor is the one factor of production which costs less to the capitalist than the value it produces.¹³⁴ If workers were wholly compensated for the corresponding value they produced, then there would be no profit at the end of the

¹²⁵ See DAVID HARVEY, A COMPANION TO MARX'S *CAPITAL* 122–25 (2010).

¹²⁶ See KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY*, VOLUME ONE 251 (Ben Fowkes trans., Penguin Books 1990) (1867).

¹²⁷ See HARVEY, *supra* note 125, at 92.

¹²⁸ See *id.* at 93.

¹²⁹ MARX, *supra* note 126, at 260–69. Though occasional exchanges by merchants do “parasitically” turn a quick profit this way, cleverly navigating prices cannot account for widespread surplus-value generation. *Id.* at 264–67. Marx notes, “The capitalist class . . . taken as a whole, cannot defraud itself.” *Id.* at 266.

¹³⁰ *Id.* at 270. Labor, as a “special commodity” which the capitalist must purchase to produce something, has the unique quality of creating more value than it cost to purchase. *Id.*

¹³¹ See *id.* at 291.

¹³² See *id.* at 262; HARVEY, *supra* note 125, at 122.

¹³³ See MARX, *supra* note 126, at 269. Marx sarcastically likens this result to larva transforming into butterflies—miraculously! *Id.* This process of exchange is labeled M-C-M'—Money for Commodity (or bundle of commodities) for more Money—where “M'=M+ΔM, i.e. the original sum advanced [for production] plus an increment [or profit].” *Id.* at 251.

¹³⁴ See *id.* at 270; HARVEY, *supra* note 125, at 102.

process.¹³⁵ So, workers produce enough value during their working day to cover the cost of their own wages, but, crucially, workers continue to labor beyond that moment, creating surplus-value.¹³⁶ Thus, it is human skill, creativity, and ingenuity, that add value to the commodity during the production process, and by compensating that human input at a rate less than the value of its output, the capitalist is able to sell the commodity for more than its purchasing price.¹³⁷ And so, upon sale of the commodity at that higher price, the surplus-value is realized.¹³⁸

The question is, after workers have produced enough value to pay for their own wages, what happens to the additional surplus-value they produce? The answer is that the owner of the enterprise and its inputs appropriates the surplus-value and decides whether to reinvest or keep the profits.¹³⁹ It is in this way that workers are exploited, not necessarily through a system of abuse or violence, but simply by the rules of the capitalist economy.¹⁴⁰

And so, corporations are only able to make a profit when they generate surplus-value, beyond the cost of production (including employees' wages).¹⁴¹ This value is generated in large part by the labor force.¹⁴² To then use the surplus created by workers for political purposes, all the while preventing those very workers—the source of the surplus—from having any say on which political

¹³⁵ See HARVEY, *supra* note 125, at 124–25 (explaining that surplus-value is created “by milking the gap between what labor gets and the value that labor makes.”).

¹³⁶ See MARX, *supra* note 126, 324–25. Marx calls the amount of labor needed each day to reproduce the laborer's cost “necessary labour” and calls the amount of time worked beyond that point each day “surplus labour.” *Id.*

¹³⁷ See *id.* at 283; HARVEY, *supra* note 125, at 132–33.

¹³⁸ See MARX, *supra* note 126, at 293.

¹³⁹ See WOLFF, *supra* note 20, at 105.

¹⁴⁰ See *id.* at 103–06. Wolff describes the “surplus-analysis” as the key differentiator between a capitalist political economy and a socialist one. Whereas the surplus, or profits, in a capitalist system are appropriated and controlled by a minority class of capitalists, a socialist system is one in which the workers themselves appropriate and distribute the surplus of their own labor. *Id.* at 105. This explanation of the difference between capitalism and socialism necessarily differs from the mainstream conception of private versus public (or government) ownership of the means of production. See Ilya Somin, *Perils of “Democratic Socialism”*, REASON: VOLOKH CONSPIRACY (June 5, 2019, 8:15 PM), <https://reason.com/2019/06/05/perils-of-democratic-socialism-2/>. If a *government* appropriates and distributes surplus in an undemocratic way (without the direct input of the workers who generated it), as many historical examples of countries who called themselves “socialist” have, Wolff argues these economies are merely *state*-capitalist nations, as opposed to *private*-capitalist nations like the United States. WOLFF, *supra* note 20, at 106–07.

¹⁴¹ See HARVEY, *supra* note 125, at 123–24.

¹⁴² See Palladino, *supra* note 86, at 126–27.

causes the surplus will be spent is unfair and inherently anti-democratic, making worker exploitation even more apparent.¹⁴³ However, increased worker ownership and control of corporations would mitigate the twofold quandary of exploitation: (1) appropriation—being “deprived of the fruits of one’s labor,”¹⁴⁴ and (2) distribution—the lack of control as to where the corporate surplus-value shall go.¹⁴⁵

As generators of a corporation’s speaking power, workers ought to be given a say as to how that speech power is used. But when human labor is viewed merely as a production cost that must be reduced in order to maximize shareholder wealth, the political influence derived from workers is likely to be spent advancing shareholders’, as opposed to workers’, interests on issues such as wages, union rights, maximum hours, overtime pay, and other benefits.¹⁴⁶ The idea is simple: it is unfair to bankroll political issues with money generated by another person without the consent of that person.¹⁴⁷ This is particularly obvious when the political ideas being promoted are against that person’s interest.¹⁴⁸ And so, understanding exploitation and its product, inequality, as social harms in need of remedy gives credence to expanding the democratic power of workers. Yet, as economic inequality continues to rise, particularly along racial and gender lines, the hope of democratic power for workers becomes fainter.

¹⁴³ See WOLFF, *supra* note 20, at 94.

¹⁴⁴ BOWLES & GINTIS, *supra* note 72, at 16.

¹⁴⁵ See WOLFF, *supra* note 20, at 11–12.

¹⁴⁶ See *id.* at 94 (arguing that the disparity of resources available for political contributions between workers and capital results in a political system highly attuned to the needs of the latter over the former). See, e.g., Sara Nelson, *Amazon’s Battle in Seattle Is a Fight Against Worker Power*, AM. PROSPECT (Oct. 28, 2019), <https://prospect.org/power/amazons-battle-in-seattle-is-a-fight-against-worker-power/> (explaining how working-class victories like the \$15 minimum wage in certain cities have invigorated corporate political spending against such efforts).

¹⁴⁷ Some may argue that the employee contract is a form of consent to the political spending of the employer since the employee alienates their right to the product of their labor and its value. See KELLY, *supra* note 32, at 69–72. The prevalence of this argument necessitates a Marxian analysis for understanding surplus-value and exploitation. But even without a Marxian analysis, the leverage and relative bargaining power of the average corporation against the average worker reveals that non-union workers have little ability to negotiate for a fair contract, and the use of the value added by the employee to advocate for politicians and policies that are detrimental to the employee must be seen as an agreement reached against the coercive alternatives to acceptance for the worker (i.e. unemployment, poverty, eviction, lack of health insurance, etc.). See Cohen, *supra* note 82, at 257–60.

¹⁴⁸ See Nelson, *supra* note 146 (describing corporate political spending in opposition to pro-worker initiatives like an increased minimum wage).

C. Inequality: The Upward Spiral of Wealthy White Male Hegemony

Inequality is practically baked into the corporate structure in the United States,¹⁴⁹ and it is reaching unprecedented levels.¹⁵⁰ The distribution of political speaking power to corporate boards and managers perpetuates these massive levels of inequality.¹⁵¹ For instance, the average CEO-to-worker compensation ratio is over 300-to-1.¹⁵² Regarding inequality in the ownership of corporate equity, over eighty-six percent of business equity is owned by the top ten percent of households, while the bottom half of households own less than one percent of such equity.¹⁵³ Moreover, racial and gender inequality remains prevalent among the power-holders of corporations.¹⁵⁴

Concomitant with the economic inequality accelerated by the corporate squeeze for surplus-value, gender, and race inequality are entrenched by the current corporate governance structure.¹⁵⁵

¹⁴⁹ See PIKETTY, *supra* note 25, at 1 (“When the rate of return on capital exceeds the rate of growth of output and income . . . capitalism automatically generates arbitrary and unsustainable inequalities that radically undermine the meritocratic values on which democratic societies are based.”).

¹⁵⁰ See Taylor Telford, *Income Inequality in America is the Highest it’s Been Since Census Bureau Started Tracking it, Data Shows*, WASH. POST (Sept. 26, 2019, 3:57 PM), <https://www.washingtonpost.com/business/2019/09/26/income-inequality-america-highest-it-been-since-census-started-tracking-it-data-show/> (reporting on a rise in the Gini index which measures wealth inequality on a scale from zero, representing a society where every household has the same wealth as every other household, to one, where all wealth is held by one household to the exclusion of all others). When income inequality in the U.S. began being measured, the Gini index was 0.40. In 2018, the index had reached 0.49. *Id.* For context, no European country had an index higher than 0.38 in 2018. *Id.*

¹⁵¹ See Greenfield, *supra* note 19.

¹⁵² See Lawrence Mishel & Jessica Schieder, *CEO Compensation Surged in 2017*, ECON. POLY INST. (Aug. 16, 2018), <https://www.epi.org/publication/ceo-compensation-surged-in-2017/>.

¹⁵³ See Palladino, *supra* note 86, at 136; FEDERAL RESERVE, DISTRIBUTIONAL FINANCIAL ACCOUNTS, *Distribution of Household Wealth in the United States Since 1989*, <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/> (select “Corporate equities and mutual funds share” in Select Wealth Component dropdown; then mark Units as “Shares (%)”) (last updated Dec. 18, 2020).

¹⁵⁴ See Cummings, Ramirez, & Wade, *supra* note 93, at 407–17 (discussing the prevalence of white male supremacy in corporations). According to a 2018 survey, women of color hold only 4.6% of corporate board seats in *Fortune 500* companies while white men hold sixty-six percent of board seats. See ALLIANCE FOR BOARD DIVERSITY, MISSING PIECES: THE 2018 BOARD DIVERSITY CENSUS OF WOMEN AND MINORITIES ON *FORTUNE 500* BOARDS 5, 17 (Jan. 16, 2019) (finding that although diversity on corporate boards has been increasing, progress is slow).

¹⁵⁵ See Cummings, Ramirez, & Wade, *supra* note 93, at 407–17 (regarding the lack of pedagogy on white male supremacy in corporations).

The concept of shareholder primacy, “one of the key drivers of inequality in our economy,” was fiercely advanced by Milton Friedman at a particular historical moment in the United States.¹⁵⁶ Friedman published *Capitalism and Freedom* in 1962,¹⁵⁷ amidst the emerging Black freedom struggle for civil rights, which by the end of the decade, dovetailed with the radical labor movement.¹⁵⁸ Friedman anchored (whether or not consciously¹⁵⁹) the hegemony of white male elites by arguing that shareholders, disproportionately represented by that demographic, and their interests are to be the ultimate concern of corporations above any other corporate constituency.¹⁶⁰ In this way, the economic inequality advanced by shareholder primacy worsens gender and race inequities.¹⁶¹

Identifying who currently owns corporate equity in this country and how their ownership relates to surging inequality reveals the devastating consequences of the shareholder primacy philosophy.¹⁶² The prevalent use of stock options for upper-level and C-Suite managers has transferred enormous wealth generated by corporations to those in already highly lucrative positions.¹⁶³ Moreover, “broad stock ownership across American society is a myth.”¹⁶⁴ The top tier of income earners own most of the corporate equity in the United States, thus increasing share value disproportionately benefits the wealthiest upper centile of households, driving unprecedented levels of inequality.¹⁶⁵ This arrangement of

¹⁵⁶ See Lauren Jacobs, *The Racist Lie of “Takers and Makers”*, BOS. REV. (Oct. 2, 2019), <http://bostonreview.net/forum/american-corporation-crisis%E2%80%94lets-rethink-it/lauren-jacobs-racist-lie-%E2%80%9Ctakers-and-makers%E2%80%9D>.

¹⁵⁷ See generally MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* (1962).

¹⁵⁸ See Palladino, *supra* note 86, at 124; Jacobs, *supra* note 156. For a history of the culmination of these two political movements in the late 1960s; see generally MICHAEL K. HONEY, *SOUTHERN LABOR AND BLACK CIVIL RIGHTS: ORGANIZING MEMPHIS WORKERS* (1993).

¹⁵⁹ See John Jackson, *Milton Friedman’s Economic Racism*, EVONOMICS (June 23, 2019), <https://evonomics.com/milton-friedmans-economic-racism/>.

¹⁶⁰ See Jacobs, *supra* note 156.

¹⁶¹ See *id.*

¹⁶² See Holmberg, *supra* note 34, at 5.

¹⁶³ See PIKETTY, *supra* note 25, at 378–81 (explaining how the rise of “supermanagers,” CEOs with “skyrocketing pay packages,” including stock options, accounts, in part, for the soaring wealth and income inequality in the United States).

¹⁶⁴ Holmberg, *supra* note 34, at 8–9 (“Less than [fourteen percent] of households in the United States own corporate stock directly.”).

¹⁶⁵ See Holmberg, *supra* note 34, at 8; see also Thomas Piketty, Emmanuel Saez, & Gabriel Zucman, *Distributional National Accounts: Methods and Estimates for the United States*, 133 Q.J. ECON. 553, 598 (2018) (explaining that the upward spiraling of wealth

share ownership also contributes to the racial wealth gap since white households are more likely to own corporate stock than Black and Latinx households.¹⁶⁶ This upward spiral of inequality along the intersecting lines of class, race, and gender will continue unless the corporate structure is radically reconfigured to be more democratic.

III. THE SOLUTION: WORKER DEMOCRACY IN CORPORATIONS

The three problems exacerbated by *Citizens United*—illegitimacy, exploitation, and inequality—can be mitigated through reforming corporations to be more democratic.¹⁶⁷ Specifically, such reforms should mandate worker share ownership and increased worker control on corporate boards.¹⁶⁸ These reforms (1) will counter the anti-democratic tendencies promoted by *Citizens United*—illegitimacy, exploitation, and inequality—and (2) are politically viable, salient, and mobilizing.¹⁶⁹

inequality “leads to an increase in capital income concentration, which itself reinforces wealth inequality as top capital incomes are saved at a high rate”).

¹⁶⁶ See Holmberg, *supra* note 34, at 9 (“While [sixty] percent of white households have retirement accounts and/or own some stock, only [thirty-four] percent of black households and [thirty] percent of Latinx households do . . .”).

¹⁶⁷ This Note’s analysis is largely missing consideration of other “external” stakeholders of corporations, such as consumers, communities, and the environment, and instead focuses on deepening democracy for a neglected internal stakeholder—the worker. See KELLY, *supra* note 32, at 150 (“All stakeholders do indeed deserve consideration. But that doesn’t mean all deserve internal standing.”). Although the political power of corporations has sometimes dire consequences for external constituents, it is beyond the scope of this Note to articulate reforms that address these concerns. But, for an analysis arguing for additional constituents, see Greenfield, *supra* note 19. For a justification of this limited focus on workers, see KELLY, *supra* note 32, at 149–50 (arguing that external stakeholders may be better protected via government regulation imposed on corporations from the outside, while democratic reforms for workers can be achieved through reforms to corporate governance laws).

¹⁶⁸ See Palladino, *supra* note 86, at 126-27; Ferreras, *supra* note 95.

¹⁶⁹ Corporations are incorporated in the state of their choice and are thereafter governed by the corporate laws of that state. See Palladino, *supra* note 86, at 133-34. The state in which most corporations (six out of every ten) are incorporated is Delaware. See KENT GREENFIELD, *THE FAILURE OF CORPORATE LAW 2* (2006). Implementing the following reforms to corporate law would likely necessitate requiring federal charterships, since enacting worker-friendly reforms which shareholders oppose in any one state would merely drive corporations to seek a chartership in a different state with its preferred corporate laws. This results in a classic federalism problem of a “race to the bottom” among the states, who compete for corporate charterships by catering to shareholders, often at the expense of other stakeholders—although shareholder primacists actually find this feature of corporate law to be a “race to the top.” See Kent Greenfield, *Democracy and the Dominance of Delaware in Corporate Law*, 67 DUKE J. L. & CONTEMPORARY PROBLEMS 135-45 (2004).

A. Worker Ownership Funds

One effective way to mitigate the illegitimate, exploitative, and unequal relationship between owners of capital and those who must sell their labor to survive would be to require corporations to create an ownership fund specifically for workers.¹⁷⁰ The fund could be created by diluting the existing shareholders' ownership of a corporation, incrementally siphoning a percentage of corporate equity into a collective trust held for workers.¹⁷¹ One policy proposal offered by Senator Bernie Sanders during his 2020 presidential bid would add two percent of corporate equity to the Worker Ownership Fund each year for ten years until workers controlled twenty percent of their corporation's equity.¹⁷² A policy analyst explained that this proposal would "shift at least \$7.1 trillion of corporate equity," of the \$35.6 trillion currently existing in the U.S., "into worker funds by gradually diluting the value of previously-issued corporate stock."¹⁷³

These Worker Ownership Funds would create both "distributional and control rights," meaning workers would be rewarded with a share of the corporate surplus and be able to exercise the voting and other decision-making rights of shareholders.¹⁷⁴ Crucially, unlike typical shareholder investments, individual employees would not be able to transfer or alienate their portion of corporate equity.¹⁷⁵ Thus, the benefits and control of the worker-ownership fund would remain with the current employees of the corporation in perpetuity,¹⁷⁶ so as not to wind up back in the hands of capitalists.¹⁷⁷

¹⁷⁰ See Matthew Lawrence, *Owning the Future*, INST. FOR PUB. POL'Y RES. (Jan. 19, 2018), <https://www.ippr.org/blog/owning-the-future>.

¹⁷¹ See Palladino, *supra* note 86, at 135-36.

¹⁷² *Corporate Accountability and Democracy*, BERNIESANDERS.COM: ISSUES, <https://berniesanders.com/issues/corporate-accountability-and-democracy/> (last visited Dec. 4, 2020).

¹⁷³ Matt Bruenig, *Bernie Wants You to Own More of the Means of Production*, JACOBIN (Oct. 14, 2019), <https://www.jacobinmag.com/2019/10/bernie-wants-you-to-own-more-of-the-means-of-production>.

¹⁷⁴ Lawrence, *supra* note 170.

¹⁷⁵ See Palladino, *supra* note 86, at 137.

¹⁷⁶ See *id.*

¹⁷⁷ See MATTHEW LAWRENCE ET AL., CO-OPERATIVES UNLEASHED: DOUBLING THE SIZE OF THE UK'S CO-OPERATIVE SECTOR 42 (2018) (discussing how Employee Stock Ownership Plans (ESOPs) have often done just this due to their ability to be bought and sold).

In measuring the effectiveness increased worker ownership and worker control of corporations would have on legitimizing the corporation as a political actor, one should look to Hurst's utility and responsibility factors for legitimacy.¹⁷⁸ Worker ownership funds would legitimize corporations via social utility because workers who know that increased productivity has the potential to result in economic gains would be incentivized to work more efficiently and productively.¹⁷⁹ Also, granting voting rights to workers as shareholders would legitimize corporations by making them more accountable to workers' interests.

The concept of exploitation entails the relationship between workers and the value they produce.¹⁸⁰ Currently, shareholders, as residual claimants, expect to be the primary beneficiaries of the surplus-value generated by workers.¹⁸¹ So, regarding the appropriation aspect of exploitation, Worker Ownership Funds would return to workers some of the value they produced.¹⁸² This surplus would be redistributed to workers when dividends are granted.¹⁸³ In a very real way, Worker Ownership Funds grant workers a degree of ownership over the means of production.¹⁸⁴

Worker Ownership Funds would also reduce inequality in several ways. Worker Ownership Funds would provide the ability to build wealth for those employed in low-wage and insecure jobs at

¹⁷⁸ HURST, *supra* note 107, at 58.

¹⁷⁹ See Palladino, *supra* note 32 (explaining how such funds would help ensure that "the workers who created the profits will not be left in the dust" when corporate directors decide on actions like the distribution of dividends).

¹⁸⁰ See WOLFF, *supra* note 20, at 11–12 (defining exploitation as "the production of a surplus appropriated and distributed by those other than its producers").

¹⁸¹ See Ciepley, *supra* note 75, at 146.

¹⁸² See Peter Gowan & Mathew Lawrence, *Democratic Ownership Funds: Creating Shared Wealth and Power*, COMMON WEALTH (June 12, 2019), <https://www.commonwealth.co.uk/Democratic-ownership-funds-creating-shared-wealth-and-power.html>.

¹⁸³ See Palladino, *supra* note 32 ("Granting employees an equity 'stake and a say' in the companies that they work for means that when corporate executives decide on the level of dividends to be paid to shareholders, the workers who created the profits will not be left in the dust.").

¹⁸⁴ See Bruenig, *supra* note 173 (outlining Sen. Bernie Sanders' plan to create Worker Ownership Funds). Moreover, this "backend" payment of surplus-value through dividends accounts for the variation in profit from year to year by giving workers a portion at the end of the business process rather than issuing higher wages on the front-end, which would require predicting the corporation's profitability for the future term. This back-end arrangement also incentivizes productivity since workers would know their increased efficiency will be materially rewarded. However, in crafting legislation to enact these funds, it will be crucial to prevent corporations from simply reducing wages either to maintain a level of profitability for shareholders' despite their diluted ownership or by treating the workers' dividends as a portion of their compensation.

corporations, positions disproportionately held by people of color.¹⁸⁵ Encouragingly, research from Rutgers suggests that worker ownership plans reduce the gender and racial wealth gap.¹⁸⁶ The study interviewed workers who participated in Employee Stock Ownership Plans (ESOPs) at their jobs,¹⁸⁷ a voluntary retirement savings program similar to Worker Ownership Funds. The women of color interviewed for the study had accumulated much more wealth through ESOPs than their demographic's average nationally.¹⁸⁸ In terms of household wealth, Latinx households with ESOPs had built almost twelve times as much wealth as Latinx households nationally, while Black households with ESOPs had three times as much wealth as Black households nationally.¹⁸⁹ But while access to the Worker Ownership Fund, unlike ESOPs, would be tied to maintaining employment with the corporation, and the primary financial benefit would come in the form of dividend payouts rather than a stock asset that could be bought and sold, these dividends could provide additional disposable income for working-class families to invest in other forms of asset building.

Though the estimated payouts for Worker Ownership Funds vary significantly across economic sectors,¹⁹⁰ these Ownership Funds would also grant workers the voting rights enjoyed by shareholders.¹⁹¹ By owning part of the corporation, workers would be given the ability to engage in the decision-making process in the same way shareholders do.¹⁹² These include some of the most important decisions affecting workers' lives, such as "mergers and

¹⁸⁵ INSTITUTE FOR THE STUDY OF EMPLOYEE OWNERSHIP AND PROFIT SHARING, BUILDING THE ASSETS OF LOW AND MODERATE INCOME WORKERS AND THEIR FAMILIES: THE ROLE OF EMPLOYEE OWNERSHIP 21 (Mar. 2019), https://smlr.rutgers.edu/sites/default/files/rutgerskelloggreport_april2019.pdf ("[W]hite men are overrepresented in jobs with the highest levels of authority, earnings, and job training while black and Latina women are often concentrated in low-wage, low-prestige jobs that lack benefits.") (citations omitted); Holmberg, *supra* note 34, at 9.

¹⁸⁶ See INSTITUTE FOR THE STUDY OF EMPLOYEE OWNERSHIP AND PROFIT SHARING, *SUPRA* NOTE 185, at 21.

¹⁸⁷ *Id.* at 2.

¹⁸⁸ *Id.* at 21.

¹⁸⁹ *Id.*

¹⁹⁰ See Palladino, *supra* note 32 (estimating, for instance, had these funds been in place, an Apple employee would have enjoyed \$10,405 in stock payouts, while a Wal-Mart employee's payout would have been \$400).

¹⁹¹ See *id.*

¹⁹² See Palladino, *supra* note 86, at 139.

acquisitions, liquidation, and electing the board of directors.”¹⁹³ Those confronting the real-world consequences of the corporation’s decisions, like losing their job, would finally have an avenue for participating in that decision. Coupled with economic bicameralism, as outlined below, Worker Ownership Funds would redistribute a degree of control to workers, doing much to make corporations democratic political actors.¹⁹⁴

B. Worker Decision-Making Via Economic Bicameralism

While Worker Ownership Funds would provide an avenue for workers to participate in corporate governance, the most ambitious funds, which advocate for only twenty percent of corporate equity, would leave workers with a minority of the voting share.¹⁹⁵ So, giving workers more control regarding the strategic decisions of the firm on the corporate board would give workplace democracy more bite.¹⁹⁶ While this control could take a number of different forms, a structure developed by Isabelle Ferreras, which she has termed “economic bicameralism,” presents an attractively simple and fair way to extend democratic agency to workers.¹⁹⁷

An economic bicameral corporate structure would mean two separate governing bodies in the corporation represent capital

¹⁹³ *Id.*

¹⁹⁴ See Lawrence, *supra* note 170.

¹⁹⁵ See *Corporate Accountability and Democracy*, *supra* note 172.

¹⁹⁶ See Ferreras, *supra* note 95.

¹⁹⁷ See “A Reader’s Guide for Reflection and Debate about Economic Bicameralism,” in FERRERAS, *supra* note 22, at 171–88. *But see* “Conventional Account of Why Multi-Stakeholder Governance Cannot Work” in Yosifon, *supra* note 55, at 1238–39 (discussing how shareholder primacist scholars criticize an economic bicameral model because (1) board consideration of workers’ in addition to shareholders’ interests would either paralyze the board or allow malfeasance by claiming it was in the interest of one of the constituencies, and (2) worker representation on corporate boards would lead to representatives seeking to maximize the interests of their constituency at the expense of other representative’s constituencies). For a recent example of an attempt by corporate management to voluntarily consider interests beyond the shareholders, see Business Roundtable, *Statement on the Purpose of a Corporation* (Aug. 19, 2019), <https://opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf> (updating its “Statement on the Purpose of a Corporation” to espouse an equal consideration for and commitment to “stakeholders”: customers, employees, suppliers, and communities, in addition to shareholders). *But see* Ferreras, *supra* note 95 (expressing serious doubt that Business Roundtable’s nice words would actually benefit the worker-corporation relationship).

investors and labor investors respectively.¹⁹⁸ This would meaningfully involve workers in corporate governance.¹⁹⁹ Economic bicameralism would make corporations accountable to two equal representative bodies. One body—a House of Capital-Investor Representatives—would be elected via a vote from shareholders, just as current boards of directors are elected.²⁰⁰ The other body—a Labor-Investors House of Representatives—would be elected by and accountable to workers.²⁰¹ Then the corporation would be steered by an executive committee that would receive its direction from decisions passed by both houses.²⁰² Like legislative bicameralism, each house would have veto power over a decision proposed by the other house.²⁰³ Thus, strategic, firm-wide decisions would require buy-in from both labor and capital representatives.

Economic bicameralism would legitimize corporations by giving the otherwise voiceless labor constituency an equal seat at the decision-making table.²⁰⁴ Through the bicameral system, corporations would offer the legitimizing utility of learning by providing more responsibility to workers regarding strategic decisions of the corporation, thereby both increasing workers' knowledge and awareness of corporate information and utilizing the unique knowledge and expertise already possessed by workers.²⁰⁵ Corporations would also clearly be legitimized via increased responsibility in an economic bicameral system because they would become accountable to workers' interests.²⁰⁶

This increased accountability would also coincide with increased control for workers. Workers are exploited not only by the appropriation of the profits they produce but also by their complete lack of agency as to how those profits will be used.²⁰⁷ This distributional aspect of exploitation would be mitigated through a corporate structure like economic bicameralism that increases worker

¹⁹⁸ See FERRERAS, *supra* note 22, at 140–41.

¹⁹⁹ See KELLY, *supra* note 32, at 156; see also FERRERAS, *supra* note 22, at 140.

²⁰⁰ FERRERAS, *supra* note 22, at 140–41.

²⁰¹ *Id.*

²⁰² *Id.* at 146.

²⁰³ *Id.* at 141.

²⁰⁴ *Id.* at 140.

²⁰⁵ See HURST, *supra* note 107, at 58.

²⁰⁶ *Id.*

²⁰⁷ See WOLFF, *supra* note 20, at 11–12.

control over strategic decision-making.²⁰⁸ In a bicameral corporate government, labor representatives and capital representatives would need to reach a mutually agreeable decision regarding the corporate surplus.²⁰⁹ For instance, rather than the corporate surplus going to fund, say, rivals to politicians who increased the minimum wage in a city where the company employs a lot of workers,²¹⁰ management would have to satisfy both investors and workers when determining whether or not the corporation should participate as a political actor and what political causes it ought to advance.

Also, as a much-needed blow to shareholder primacy, increased worker control would fundamentally change the incentives at corporations, making corporations consider the interests of workers, rather than seeing workers merely as a production cost that needs to be minimized.²¹¹ Thus, workers having democratic agency regarding the use of the value they produce would displace the exploitative relationship between workers who invest their labor in the corporation and shareholders who invest capital.²¹²

Economic bicameralism also has the potential to reduce inequality in a number of ways. First, workers would have a say in the compensation of top managers at the corporation.²¹³ This is important because unprecedented levels of executive compensation have been linked to rising economic inequality in the United States since the 1970s.²¹⁴ Workers would likely be interested in reining in the over 300-to-1 income ratio of the average CEO to the average worker.²¹⁵

Second, those labor-board members representing labor

²⁰⁸ See FERRERAS, *supra* note 22, at 73, 75–76.

²⁰⁹ See *id.* at 130–31.

²¹⁰ See Goyette, *supra* note 3 (describing how in 2015 Seattle became the first major city in the country to adopt a \$15 minimum wage thanks to city councilmembers whose reelection Amazon opposed in 2019).

²¹¹ See Anne Price, *Don't Fixate on the Racial Wealth Gap: Focus on Undoing Its Root Causes*, ROOSEVELT INST. 26 (Feb. 2020) (“There are a set of enabling goods and services that are so critical for life, liberty, and self-determination that their production and distribution should not be vulnerable to the rationing and pricing that come about from firms trying to maximize profits for their shareholders.”); see also HARVEY, *supra* note 125, at 132.

²¹² See WOLFF, *supra* note 20, at 11–12.

²¹³ See KELLY, *supra* note 32, at 156.

²¹⁴ See PIKETTY, *supra* note 25, at 374–81 (explaining that the top ten percent of wealth holders claimed a larger portion of total incomes as remuneration for upper-level management employees outpaced average wage growth).

²¹⁵ See Mishel & Schieder, *supra* note 152, at 1, 3–4.

investors, a much more diverse group than capital investors, would likely accelerate increasing the gender and racial diversity of corporate directors, which has otherwise seen snail's-pace progress in recent years among unicameral boards elected by shareholders.²¹⁶

Third, given the deficiency of democratic engagement among working-class citizens, economic bicameralism would counter political inequality in the United States.²¹⁷ By providing an avenue for democratic participation in the workplace, those who have determined that the political process fails to represent their interests would find their "hunger for democracy" being fulfilled in their economic lives.²¹⁸

Thus, Worker Ownership Funds and Economic Bicameralism would do much to address the democratic crises that *Citizens United* unleashed. However, diminishing the illegitimacy, exploitation, and inequality of corporate political power is easier said than done. Fortunately, the glimmer of a viable path toward enacting these vital measures has emerged in recent years, thanks in large part to *Citizens United* itself.

IV. THE SMALL DOLLAR REVOLUTION: POLITICAL VIABILITY OF CORPORATE REFORM

Intuitively, these democratizing reforms would seem doomed to fail in a post-*Citizens United* political landscape. How could the political needs of the working class be heard over the blaring agenda of well-resourced corporations? But actually, the moment may be ripening for radical corporate reforms as the political winds seem to be filling the sails of democratic socialism in parts of the United States.²¹⁹

²¹⁶ See ALLIANCE FOR BOARD DIVERSITY, *supra* note 154, at 17 (noting that in 2018 women of color held only 4.6% of corporate board seats on *Fortune 500* companies while white men held sixty-six percent of board seats).

²¹⁷ See Solt, *supra* note 63, at 48, 57.

²¹⁸ See FERRERAS, *supra* note 22, at 160.

²¹⁹ See, e.g., Peter Lucas, *Zohran Mamdani's New York State Assembly Victory Shows What Winning Socialist Campaigns Can Look Like*, JACOBIN (July 27, 2020), <https://jacobinmag.com/2020/07/zohran-mamdani-dsa-new-york-socialism> (emphasizing how Zohran Mamdani, the victorious socialist candidate in the New York State Assembly race, refused corporate donations while his opponent raked in corporate donations to the tune of

Yet the ability of unaccountable corporate entities to dictate our political system has been detrimental to democracy. Corporations are controlled by a small portion of the general population,²²⁰ and historically, democratic participation in our country is notably weak when compared to other similar countries.²²¹ Studies show that an unequal distribution of power contributes to low political participation.²²² Disproportionately, the working class is less likely to engage in the political process in our Country.²²³ Correcting this lopsided political engagement is crucial because addressing pressing issues of the twenty-first century, like climate catastrophe, will require political engagement from a larger portion of the population.²²⁴ Meanwhile, the anti-democracy of *Citizens United* is a direct impediment to that increased participation.

Highlighting *Citizens United*'s most unpopular anti-democratic consequences is an effective way to engage otherwise disinterested or disillusioned populations in the political process by appealing to people's "hunger for democracy."²²⁵ Should this appeal translate into elected legislative power, democratizing corporations is a compelling way to tackle the root issue accelerated by *Citizens United*: concentrated power.²²⁶ There is an advantage to circumventing

\$230,000); see also Daniel Berti, *Marine Vet, Lyft Driver, Socialist: Del. Lee Cart Confounds his Critics*, PRINCE WILLIAM TIMES (Feb. 18, 2020), https://www.princewilliam-times.com/news/marine-vet-lyft-driver-socialist-del-lee-carter-confounds-his-critics/article_4ecb5880-323a-11ea-8eb5-5ba353e2dcb3.html (describing how a socialist Virginia state delegate defeated a six-term Republican incumbent in 2017 and fended off challenges from Republican and Democratic rivals to win reelection in 2019).

²²⁰ See Greenfield, *supra* note 19 ("[*Citizens United*] poses a major problem for our democracy because corporations amplify the voices of a tiny number of the financial and managerial elite—the notorious [one] percent.>").

²²¹ See DeSilver, *supra* note 60.

²²² See Solt, *supra* note 63, at 48 (conducting an empirical study across five Western democratic countries showing that the degree of one's political interest, the frequency of their political discussions, and the rate of their electoral participation correlated with income inequality—the more unequal the country the less politically engaged the non-affluent were).

²²³ See *id.* at 54.

²²⁴ See Naomi Klein, *Don't Look Away Now, the Climate Crisis Needs You*, GUARDIAN (Mar. 6, 2015, 7:25 PM), <https://www.theguardian.com/environment/2015/mar/06/dont-look-away-now-the-climate-crisis-needs-you> (explaining that the scope of the climate crisis requires a global effort of massive political-economic transformation which can only be brought about through a mandate delivered by an equally massive political movement).

²²⁵ See FERRERAS, *supra* note 22, at 159–60 (tracing recent global democratic uprisings such as Occupy Wall Street, Black Lives Matter, and the Arab Spring, as manifestations of an expectation of democratic justice).

²²⁶ If corporations were democratically controlled, there would be less of an issue with allowing corporations to participate in our political system. See Greenfield, *supra* note 19;

Citizens United in this way. Seeking to overturn the decision or pass a constitutional amendment against corporate personhood is a much harder political battle, implicating an attack on free speech, and misses an opportunity to win a more compelling political argument about deepening our commitment to democracy.²²⁷ As Peter Bachrach pointed out in 1982, “[w]ithin the context of American experience . . . our history shows that democracy, taken seriously, disrupts the existing distribution of power.”²²⁸

The first step in taking democracy seriously is to highlight just how anti-democratic corporate dominance of our politics is. Luckily, rejecting corporate donations and directly antagonizing corporate political influence has come to be an effective campaign strategy in recent years.²²⁹ *Citizens United* has played an enormous role in popularizing corporate antagonism in the political sphere.²³⁰ The case name itself has become synonymous with out-sized corporate dominance in our politics.²³¹ The “small-dollar revolution” has turned anti-corporate frustration into significant power building.²³² Sen. Bernie Sanders’s ultimately unsuccessful 2020 run for president proved as much by out-fundraising every other Democratic primary candidate through grassroots donations

see also Palladino, *supra* note 86, at 134 (explaining a way to pass radical corporate reforms via federal charters).

²²⁷ See Greenfield, *supra* note 19 (highlighting the anti-democratic nature of corporations being the heart of why *Citizens United* is so problematic); see also MARTIN H. REDISH, MONEY TALKS: SPEECH, ECONOMIC POWER, AND THE VALUES OF DEMOCRACY 8 (2001). Redish makes compelling free speech arguments in favor of corporate political participation but fails to reckon with the source and legitimacy of that speech. Thus, conservative arguments like Redish’s only hold water against restrictions on corporate speech but do not address proposals for more democracy within the corporation.

²²⁸ Peter Bachrach, *Class Struggle and Democracy*, 2 DEMOCRACY 29, 34 (Oct. 1982).

²²⁹ See Kotch, *supra* note 28 (describing how candidates touted their independence from corporate money to raise small-dollar donations in the 2018 mid-term elections).

²³⁰ See Mimi Murray Digby Marziani, *Growing Backlash Against ‘Citizens United’*, BRENNAN CTR. FOR JUST. (Jan. 24, 2012), <https://www.brennancenter.org/our-work/research-reports/growing-backlash-against-citizens-united>; see also Ian Vandewalker, *The 2018 Small Donor Boom Was Drowned Out by Big Donors, Thanks to Citizens United*, BRENNAN CTR. FOR JUST. (Jan. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/2018-small-donor-boom-was-drowned-out-big-donors-thanks-citizens-united>. Though Vandewalker sees no end in sight for the wealthy’s domination of politics, the “small donor boom” indicates that more individuals are becoming personally invested in the political process thanks to backlash from *Citizens United*. See *id.*

²³¹ See Nicandro Iannaci, *Six Years Later, Citizens United Still Looms Large*, CONST. DAILY (Jan. 21, 2016), <https://constitutioncenter.org/blog/five-years-later-citizens-united-still-looms-large>.

²³² See Eliza Newlin Carney, *Campaign Finance Reforms May Never Pass, But the Low-Dollar Revolution Has Already Begun*, AM. PROSPECT (Feb. 28, 2019), <https://prospect.org/power/campaign-reforms-may-never-pass-low-dollar-revolution-already-begun/>.

while articulating class antagonism against corporate interests.²³³ Sanders rejected corporate and Super PAC donations,²³⁴ while rivals for the party's nomination backtracked on such commitments.²³⁵

This style of politics is being replicated through “insurgent” campaigns across the country, with considerable success.²³⁶ One such insurgent candidate, Alexandria Ocasio-Cortez, won an improbable primary election against a powerful incumbent Democrat in New York thanks, in part, to a flood of small-dollar donations from across the country.²³⁷ Since first winning office in 2018, Congresswoman Ocasio-Cortez, without any corporate-backers, has continued to show fundraising prowess through small-dollar donations, outraising every other House Democrat in the third quarter of 2019.²³⁸ With the unpopularity of *Citizens United* and its resulting corporate influence over politics, candidates who expressly reject corporate cash may continue to build momentum to achieve political power.²³⁹

²³³ See Tim Dickinson, *Bernie Sanders Outraises Billionaire-Backed Competition*, ROLLING STONE (Jan. 2, 2020, 4:48 P.M.), <https://www.rollingstone.com/politics/politics-news/bernie-sanders-no-billionaire-wins-money-chase-933125/>. It is also worth noting that the Senator has been highly critical of *Citizens United* for years. See Natasha Bach, *Bernie Sanders: Citizens United Is Creating An 'Oligarchic Form Of Society'*, HUFFINGTON POST (March 27, 2014, 6:04 PM), https://www.huffpost.com/entry/bernie-sanders-oligarchy_n_5045041.

²³⁴ See Cara Korte, *Bernie Sanders Knocks Rivals for Taking Donations from Billionaires*, CBS NEWS (Dec. 16, 2019, 1:04 PM), <https://www.cbsnews.com/news/bernie-sanders-knocks-rivals-for-taking-donations-from-billionaires/>.

²³⁵ See Shane Goldmacher, *Biden Campaign Drops Opposition to Super PAC Support*, N.Y. TIMES (Oct. 24, 2019), <https://www.nytimes.com/2019/10/24/us/politics/joe-biden-super-pac.html>.

²³⁶ See Kotch, *supra* note 28 (listing each Democrat who relied on small-dollar donations to oust and defeat their incumbent Republican opponent in the 2018 mid-term elections).

²³⁷ See RYAN GRIM, WE GOT PEOPLE: FROM JESSE JACKSON TO ALEXANDRIA OCASIO-CORTEZ, THE END OF BIG MONEY AND THE RISE OF A MOVEMENT 356 (2019); Karl Evers-Hillstrom, *Ocasio-Cortez Enters the House with Highest Portion of Small Contributions*, OPENSECRETS (Dec. 17, 2018), <https://www.opensecrets.org/news/2018/12/ocasio-cortez-enters-the-house-as-most-popular-member-with-small-donors/> (showing that sixty-two percent of Ocasio-Cortez's fundraising came from small-dollar donations of less than \$200).

²³⁸ See Jake Johnson, *Without Dialing for Dollars or Lobbyist Meetings, Ocasio-Cortez Raised More Money Than Any Other House Democrat in Third Quarter*, COMMON DREAMS (Nov. 27, 2019), <https://www.commondreams.org/news/2019/11/27/without-dialing-dollars-or-lobbyist-meetings-ocasio-cortez-raised-more-money-any>.

²³⁹ See Stohr, *supra* note 18; Kotch, *supra* note 28.

Once in power, and not beholden to corporate interests, these lawmakers could conceivably address corporate political dominance via their electoral mandate.²⁴⁰ The most effective way to address the power imbalance would be to leave *Citizens United* alone altogether and work instead to make corporations more democratic.²⁴¹ Congressional lawmakers could federalize corporate charterships and thereby mandate the two corporate reforms discussed here—increasing worker ownership and worker control.²⁴²

But David G. Yosifon believed that the very power distributed to corporate boards by *Citizens United* would in all likelihood prevent reform efforts.²⁴³ Writing in 2011, Yosifon acknowledged that sweeping regulations were likely not politically salient at that time.²⁴⁴ Instead, he argued that some future “hot moment” of political focus on corporations would be needed to carry these reforms out.²⁴⁵

There is evidence that the “hot moment” is nearing, if not already upon us.²⁴⁶ Business Roundtable’s new purpose statement may be evidence that CEOs recognize as much and are attempting

²⁴⁰ See Navin Nayak, *Progressive Democrats Have a Solution for America’s Distrust of Politicians: Stop Accepting Corporate PAC Money*, NBC NEWS (Oct. 30, 2018, 5:21 AM), <https://www.nbcnews.com/think/opinion/progressive-democrats-have-solution-america-s-distrust-politicians-stop-accepting-ncna925806>.

²⁴¹ See Greenfield, *supra* note 19.

²⁴² See Palladino, *supra* note 86, at 134 (citing Sen. Elizabeth Warren’s *Accountable Capitalism Act* for proposing this course of action). Demands for federal incorporation in the United States, though mostly forgotten, are nothing new. Federal incorporation gained serious consideration from Presidents Theodore Roosevelt, Taft, and Wilson, who recognized that individualized state charterships (like we have now) incentivize a “race to the bottom” of low standards for corporations. See Wiley B. Rutledge, Jr., *Significant Trends in Modern Incorporation Statutes*, 22 WASH. U. L. Q. 305, 340 n.155 (1937). Efforts to pass federal incorporation statutes in congress, and thus leverage chartership to regulate business behavior, have essentially vanished following the 1930s. See HURST, *supra* note 107, at 75.

²⁴³ Yosifon, *supra* note 55, at 1237–38.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ See Lauren Gambino, *‘Not the Billionaires’: Why Small-Dollar Donors are Democrats’ New Powerhouse*, GUARDIAN (Mar. 10, 2019, 1:00 PM), <https://www.theguardian.com/us-news/2019/mar/10/democrats-small-dollar-donors-essential-bernie-sanders> (“Though some critics say the pledges are largely symbolic—corporate-PAC donations account for only a small percentage of total contributions for incumbents and even less for first-time candidates—they tap into the growing public frustration over the role of big money in politics since the supreme court’s 2010 *Citizens United* decision opened the door for limitless spending on elections.”).

to preemptively dissuade the heat.²⁴⁷ In fact, one CEO admitted that the new statement was necessary because “people are asking fundamental questions about how well capitalism is serving society.”²⁴⁸

Understanding not just how well capitalism is working, but precisely who in society is being served by the capitalist status quo, is essential in seeking to mobilize a popular front to change it. While the lopsided percentages of corporate equity ownership along class lines is a disturbing symbol of the inequality inherent in our capitalist system, these percentages also indicate that those on the “bottom” have much to gain and little to lose from pursuing radical corporate reforms.²⁴⁹ In a sense, the bottom half of households would have 0.8% of corporate equity “to lose” with the prospect of gaining twenty percent in return.²⁵⁰ While the upper- and upper-middle classes, who are much more invested in corporate equity, would conceivably fight tooth and nail to maintain the shareholder primacy and distribution of corporate surplus so beneficial to them, the electoral numbers are only on their side if working-class voters remain politically divided and discouraged from participating in the political process.²⁵¹ Thus, a major party re-alignment along class lines seems to be an important precursor to the kind of electoral mandate necessary to enact radical corporate reforms.²⁵² That re-alignment may be on the horizon.²⁵³

²⁴⁷ See Business Roundtable, *supra* note 197; Alan Murray, *America’s CEOs Seek a New Purpose for the Corporation*, FORTUNE (Aug. 19, 2019, 4:30 AM), <https://fortune.com/longform/business-roundtable-ceos-corporations-purpose/> (making a statement that corporations are going to extend consideration beyond merely that of shareholders to other corporate constituents).

²⁴⁸ Murray, *supra* note 247.

²⁴⁹ See Holmberg, *supra* note 34; Palladino, *supra* note 86, at 136; FEDERAL RESERVE, SUPRA NOTE 153 (showing that the bottom fifty percent of wealth-holders in the United States own only 0.6% of corporate equity).

²⁵⁰ See Gowan & Lawrence, *supra* note 182.

²⁵¹ See Dustin Guastella, *White-Collar Populism*, 35 JACOBIN 42, 44 (2019) (describing the professionalization of American politics over the twentieth century and how well-intentioned efforts to “clean up” politics had the effect of lowering [working-class] participation, “. . . by helping discourage participation in elections, the professionals increased their power as a constituency while weakening that of the working class”).

²⁵² See Matt Karp, *Is This the Future Liberals Want?*, 35 JACOBIN 52, 63 (2019) (“[W]hat is required to challenge the power of the ultrarich [is] a politics that does not treat lower-income voters as a kind of passive supplement for professional liberals, but one that can put the new working class itself at the center of the action.”).

²⁵³ See Ryan Grim, *A New Electorate: Can the Bernie Sanders Campaign Alter the Course of the Democratic Party?*, INTERCEPT (Jan. 3, 2020, 4:00 AM), <https://theintercept.com/2020/01/03/bernie-sanders-democratic-party-2020-presidential-election> (describing the ways in which Bernie Sanders 2020 presidential campaign focused on organizing

Altogether, public distaste for corporate political domination and influence is growing.²⁵⁴ The consequences of *Citizens United* have turbo-charged this distaste.²⁵⁵ Politicians leaning into this frustration have discovered an effective way to fundraise and win elections through grassroots movement building.²⁵⁶ Once actual political power is achieved via the “small-dollar revolution,” this power can and should translate into legislative reforms of corporate governance.

CONCLUSION

In sum, *Citizens United*, as a widely unpopular Supreme Court decision, has become a rhetorical symbol for the outsized, unaccountable role corporations play in American politics. Thus, *Citizens United* has been, and should continue to be, milked for all its anti-corporate mobilizing worth. However, those wisely criticizing the case ought not dwell on the issues of free speech and stripping corporations of their constitutional personhood but get right to the heart of the problem—the power imbalance between labor and capital. The blatant illegitimacy, hyper-exploitation, and soaring inequality created via the increased political speaking power of corporations following *Citizens United* must be brought to light. By exposing these lesser-discussed problems accelerated by *Citizens United*, those who hope to redistribute corporate power for workers can use an anti-corporate electoral mandate as a vehicle to enact transformative corporate reforms, essentially democratizing the economy.

working-class voters, staking success on the possibility of turning out low-propensity voters in high numbers).

²⁵⁴ See Gambino, *supra* note 246 (showing that pledges against corporate PAC money resonate with those frustrated with big money in politics).

²⁵⁵ See *id.* (describing how candidates are moving away from the traditional fundraising tactics of lobbyist meetings and expensive fundraising events which gave groups with the resources outsized access to and influence on politicians).

²⁵⁶ See *id.*; Kotch, *supra* note 28 (describing candidates raising money through ads touting their independence from corporate PAC money).

In many ways, the state has been consumed by its own creation—the corporation.²⁵⁷ Amazon attempted to cannibalize the election of its home city.²⁵⁸ Political expenditures from corporations following *Citizens United* have ballooned.²⁵⁹ Over a third of the voting-age population do not participate in elections as voter turnout in the United States continues to fall behind peer-democracies.²⁶⁰ And inequality is rising, reaching its highest level in fifty years in 2018.²⁶¹

Despite these developments, there is reason to hope. By rejecting outlandish corporate spending, working people have revolutionized campaign financing one small-dollar donation at a time.²⁶² It seems that the decision coming from a politicized Supreme Court has only fueled nascent activism to neutralize and overcome corporate interests. The key to lasting change must be to push beyond, merely, the way things used to be towards new levels of radical democracy in the workplace.

²⁵⁷ To paraphrase Justice White in *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 809 (1978) (White, J., dissenting).

²⁵⁸ See Higgins, *supra* note 8 (quoting politicians and pundits who condemned Amazon's move).

²⁵⁹ See ECONOMICS FOR INCLUSIVE PROSPERITY, ELECTION LAW AND POLITICAL ECONOMY 5 (Feb. 2019), <https://econfip.org/policy-brief/election-law-and-political-economy/#> (“In the wake of [*Citizens United*], independent expenditures rose from \$330 million in 2008 to \$1.0 billion in 2012 and \$1.4 billion in 2016.”).

²⁶⁰ See Palmer & Wilson, *supra* note 60.

²⁶¹ See Telford, *supra* note 150 (using the Gini index as a measure of inequality, 2018 marked the highest level since income inequality had begun to be measured in the United States fifty years ago).

²⁶² See Carney, *supra* note 232 (“[T]he growing number of average Americans joining the donor pool raises the intriguing possibility that culture shifts could change the face of fundraising . . .”).