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## Now your vote is the property of a private corporation

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*"The right of voting for representatives is the primary right by which all other rights are protected. To take away this right is to reduce a man to slavery...."* —Thomas Paine

March 13, 2003—Santa Clara County, of all jurisdictions in America, should have known better. They could have started by looking at Florida.

Jeb Bush stole the vote in Florida in 2000 by kicking thousands of legitimately registered black voters off the voting rolls because they had similar names to Texas felons, a feat well documented by Greg Palast and the mainstream British press. In a brilliant bit of misdirection, Bush portrayed the problem as one of incompetent elderly voters, dumb minority voters, and a problem with "chads"—unreliable voting technology.

Bush's answer was to install touch-screen voting machines across Florida in time for the 2002 election. (In this, he was following a similar course as Georgia, Texas, and 30 other key states, in large part because of \$3.9 billion in federal funds offered by the "Help America Vote Act" passed just after the 2000 election to encourage states to replace government-run paper-trail vote systems with no-paper-trail computerized systems from private corporate vendors.)

But in the November 2002 election, when some Florida voters pressed the touch-screen "button" for Bush's Democratic opponent, votes were instead recorded for Bush. "Misaligned" touch-screen voting machines were blamed for the computer-driven vote-theft, and when a losing candidate in Palm Beach sued to inspect the software of Florida's computerized voting machines, a local judge denied the petition, citing the privacy rights of the corporation that wrote the programs.

This was followed by January 2003 [revelations](#) that Republican Senator Chuck Hagel was the former head (and a current stockholder) of the private voting machine company that tabulated the vote in Nebraska—where he ran for office and won—and that he had neglected to tell Senate ethics investigators about it.

And in February of 2003, Bev Harris of [www.blackboxvoting.com](http://www.blackboxvoting.com) noticed a wide-open FTP site. Harris had just done a Google search on the company that tabulated most of the vote in Georgia in the 2002 election. (That was the upset election that saw popular war-hero Max Cleland, who lost three limbs in Vietnam, defeated by a poll-trailing draft dodger who campaigned by questioning Cleland's patriotism.) Walking into the unsecured FTP website, she says she found a software patch that was apparently applied statewide to Georgia's voting machines just days before the election, and a folder titled "rob-georgia."

And corporate control of America's vote has reached beyond the borders of this nation. The last week of February, New York's "Newsday" reported in a story by staff writer Mark Harrington that: "Election.com, a struggling Garden City start-up scheduled to provide online absentee ballots for U.S. military personnel in the 2004 federal election, has quietly sold controlling power to an investment group with ties to unnamed Saudi nationals, according to company correspondence."

Fast-forward a few days to the first week of March 2003.

Dan Spillane, a former software engineer for a voting machine company that includes a former CIA director and Dick Cheney's former assistant on its board of directors, has sued his employer for firing him when he pointed out holes in their system that he claims could lead to vote-rigging. Although there is a certification process for ensuring the honesty of votes tabulated by computerized, touch-screen voting machines, according to Spillane the system works "very much like Arthur Andersen in the Enron case." ([Anderson Consulting](#) has renamed itself, added Microsoft's CEO to its board, and gone into the business of helping corporations get contracts to perform previously-government-run services.)

Spillane filed his lawsuit the same week that Santa Clara County, California, decided to hand their electoral process over to computerized electronic voting machines programmed by a private corporation. The machines generate no paper trail that can be audited, and when voting machine companies have been challenged to produce audits of their vote or to disclose details of their software, they cite the privacy rights that come from corporations being considered "persons" in the United States.

Of all localities in America, Santa Clara County should have been the wariest. This is the county, after all, that sued the Southern Pacific Railroad in 1886 over non-payment of taxes and, in losing the lawsuit, paved the way for the corporate takeover of the United States of America.

When the railroad suggested to the Supreme Court that the Fourteenth Amendment, which freed the slaves by guaranteeing all persons equal protection under the law regardless of race, had also freed corporations because they should be considered "persons" just like humans, the attorney for Santa Clara County, Delphin M. Delmas, fought back ferociously.

"The shield behind which [the Southern Pacific Railroad] attacks the Constitution and laws of California is the Fourteenth Amendment," said Delmas before the Supreme Court. "It argues that the amendment guarantees to every person within the jurisdiction of the State the equal protection of the laws; that a corporation is a person; that, therefore, it must receive the same protection as that accorded to all other persons in like circumstances."

The entire idea was beyond the pale, Delmas said. "The whole history of the Fourteenth Amendment," he told the court, "demonstrates beyond dispute that its whole scope and object was to establish equality between men—an attainable result—and not to establish equality between natural and artificial beings—an impossible result."

The purpose of the Fourteenth Amendment, passed just after the Civil War, was clear, Delmas said. "Its mission was to raise the humble, the down-trodden, and the oppressed to the level of the most exalted upon the broad plane of humanity—to make man the equal of man; but not to make the creature of the State—the bodiless, soulless, and mystic creature called a corporation—the equal of the creature of God."

He summarized his pleadings before the Supreme Court by saying, "Therefore, I venture to repeat that the Fourteenth Amendment does not command equality between human beings and corporations; that the state need not subject corporations to the same laws which govern natural persons; that it may, without infringing the rule of equality, confer upon corporations rights, privileges, and immunities which are not enjoyed by natural persons; that it may, for the same reasons, impose burdens upon a corporation, in the shape of taxation or otherwise, which are not imposed upon natural persons."

Delmas had every reason to assume the court would agree with him—it already had in several similar cases. In an 1873 decision, Justice Samuel F. Miller wrote in the majority opinion that the Fourteenth Amendment's "one pervading purpose was the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppression of those who had formerly exercised unlimited dominion over him."

And, in fact, the court chose to stay with its previous precedent. It ruled on the tax aspects of the case, but explicitly avoided any decision on whether or not corporations were persons. "There will be no occasion to consider the grave questions of constitutional law" raised by the railroad, the court ruled in its

majority opinion. The case was about property taxes and not personhood, and, "As the judgment can be sustained upon this ground, it is not necessary to consider any other questions raised by the pleadings."

But just as computerized voting machines can be reprogrammed, so too, apparently, could a U.S. Supreme Court decision. The court's reporter—a former railroad president—took it upon himself to grant corporations personhood in the commentary (headnote) he wrote on the case, even though it explicitly contradicted the justices' ruling itself. (And to this day other forms of association, like unions, unincorporated small businesses, and even governments do not have personhood rights.)

But corporations have claimed the First Amendment right of persons to free speech and struck down thousands of state and federal laws against corporations giving money to politicians or influencing elections; they've claimed Fourteenth Amendment rights against discrimination to prevent communities from "discriminating" against huge out-of-town retailers or corporate criminals; and have claimed Fourth Amendment rights of privacy that will prevent voters or public officials from examining the software that runs their computerized voting machines.

Now corporations will be telling the citizens of Santa Clara County how they voted. And those same corporations will use the shield of corporate personhood—once valiantly disputed before the Supreme Court by the county's attorney—to withhold from the county's voters the right to "look behind the curtain" at the corporate-owned software and computerized processes that tabulate their vote. How sadly ironic.

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