

Of Corporations, Basalt Boulders, and Our Veterans

By Gordon P. Erspamer*

At first glance, the relationship among the three topics in my title may not be readily apparent. My purpose is to address perhaps the cruelest irony in the evolution of law—how it came to pass that corporations possess greater constitutional rights than our veterans.

Everyone seems to be talking about the new pending Supreme Court case about whether corporations have unlimited constitutional rights or whether the exercise of those rights can be limited, such as by spending caps. This is the case (*Citizens United v. Federal Election Commission*) involving a hit-piece movie attacking Hillary Clinton.

It seems surprising that corporations have any constitutional rights at all. Doesn't the constitution start with the words "We the People?" Corporations are not only NOT people, but they are all completely inanimate, incorporeal beings that are no more alive than a rock, say a big basalt boulder. And come to think of it, most living things have no constitutional rights either, whether they be insects or mammals or whatever. The only rights they might have are if they are threatened with extinction, like the snail darters and reg-legged frogs, and then they might receive some limited protection until their numbers recover because of efforts by non-living entities like EDF or the Sierra Club. And when we talk of the corporation's right of free speech, aren't we really talking about giving those in corporate boardrooms the right to amplify their views using other people's money, their own shareholders? In contrast, the voices of "We the People" veterans are muted by the inability to obtain legal assistance as they appeal to their government to redress grievances.

Yet, at a time when we are talking about giving the basalt boulder's neighbor, that corporate beast, the right to spend indiscriminate amounts of money to further its parochial interests, how can it be that our veterans, who surely are part of "We the People," can be saddled with a statute that forbids them from paying a lawyer any sum out of their own pockets to help them on a VA claim? I can give you the official answer, as explained by no less an authority than former Chief Justice William Rehnquist—the fee restriction is necessary to prevent overreaching by unscrupulous lawyers. (*NARS v. Walters*, 473 U.S. 305 (1985).) But aren't these same lawyers the ones who convinced the Supreme Court that a fictitious being—a corporation—is a person and has constitutional rights? Money well spent, a corporation might say, assuming it could talk more easily than our basalt boulder. And I don't ever hear any cries of outrage from corporate executives or shareholders that they or the corporation need special protection against those overreaching scoundrel lawyers they have hired to further their economic interests. Nor was there a hue and a cry when corporations were given the right of limited liability, a right that no person enjoys.

The rationale that is offered for placing limitations on a veteran's constitutional rights is that the VA adjudication process is designed to help the veteran. Does anyone really believe the VA when it says that veterans don't need lawyers because the system is "nonadversarial?" What the

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VA really means is that it doesn't want to deal with trained advocates that force the VA to apply the law properly so that each veteran obtains the compensation that Congress intended.

It doesn't call for a legal scholar to figure out that the law restricting veterans' right to spend money to retain counsel is there for only one purpose—to keep veterans down, in a place near the rocks.

That the Supreme Court is even considering this case is a real travesty and a testament to the inequalities that have been institutionalized in our legal culture. For it is not a rock or its corporate bedfellow that has been crippled and died for We the People. We should all feel ashamed that the law raises these creatures up at a time when our veterans suffer. It is time for Congress to eliminate the fee prohibition and other restrictions on the constitutional rights of veterans so at least the animate veterans will achieve comparability with the inanimate corporations.