

By What Authority

A Publication of the PROGRAM ON CORPORATIONS, LAW & DEMOCRACY

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By What Authority, the name of our publication, is English for *quo warranto*.

Quo warranto is the sovereign's command to halt continuing exercise of illegitimate privileges and authority. Evolved over the last millennium by people organizing to perfect a fair and just common law tradition, the spirit of *By What Authority* animates people's movements today.

We the people and our federal and state officials have long been giving giant business corporations illegitimate authority.

As a result, a minority directing giant corporations privileged by illegitimate authority and backed by police, courts, and the military, define the public good, deny people our human and constitutional rights, dictate to our communities, and govern the Earth.

By What Authority is an unabashed assertion of the right of the sovereign people to govern themselves.

CORPORATE INSURRECTION AGAINST DEMOCRACY DISCLOSED IN PAMPHLET

Learn from Ohioans—Go and Do Likewise

POCLAD encourages people to look into the history of corporate usurpations in their respective states. The Ohio Committee on Corporations, Law and Democracy recently did just that, publishing *Citizens Over Corporations: A Brief History of Democracy in Ohio and Challenges to Organizing in the Future*.

This 52-page pamphlet offers a basis for rethinking strategies that challenge corporate governance, today's reality which "is neither inevitable nor irreversible," according to Greg Coleridge of the Ohio Committee. We can offer only a few teasers from the pamphlet's many treasures, so do yourself and your activist colleagues a favor — get copies at once. (Ordering information below.)

These Ohio activists made important discoveries during their study:

"...while [people] were educating on single issues, researching areas of science and technology, and organizing mostly around local, state and federal regulatory agencies, corporations were focusing in constitutional arenas. There, they lobbied for the property and civil rights of human persons. ...writing state corporation codes and amending state constitutions to define giant business corporations as private—essentially beyond the authority of "We the People." (Therein lie the roots of the current corporate manipulation of our Social Security program. See this issue's feature article.)

On the Ohio Constitution of 1802:

..."perhaps the most democratic state constitution yet adopted. ... Ohio's new legislature, like other state legislatures, possessed the power to create and define corporations. Making certain the corporations were legislatively defined kept corporations closer to the people than if the responsibilities for controlling them were left to the courts."

A sampling of "defining rules" applied to incorporated companies during the first decade of the 19th Century includes:

- Charter good for 10 years (Bank of Marietta);
- Debts cannot exceed 3 times the sum of capital stock. Directors are personally

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In this issue...

We are awash in the flow of corporate-shaped opinion about the state of Social Security, which just happens to be a very public program. So-called private business corporations have usurped the terms of debate and range of response in order to shift the property and power of the people to the boardrooms of corporations.

In this issue's centerfold, Virginia Rasmussen reveals the facts and fictions of this remarkably sound insurance plan and suggests ways to take it back from corporate clutches.

Ohioans

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- liable for excessive debt. (Bank of Marietta);
- If services fail, no money (Water Company, Town of Steubenville);
- Neglect to keep road in "perfect order and repair" and tolls "shall cease to be demanded, paid or collected..." (Boardman Turnpike Road Company);

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Readers are encouraged to get back to us with comments, questions and suggestions. Please include a way for us to contact you, should BWA want to quote you with attribution.

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Instigating democratic conversations and actions that contest the authority of corporations to govern.

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- Exacting financial records must be open to stockholders (Miami Exporting Company);
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In the early decades of statehood, the people equated corporate violations of their "defining rules" with rebellion and would have none of it. Charters were revoked and companies dissolved for wrongful assumption of authority.

"Ohio's General Assembly passed a *quo warranto* act in 1838. ...when subordinate entities like corporations acted beyond their authority, or ultra vires, they were guilty of rebellion and must be terminated."

Recognizing that a charter was a legislative act and not a contract, it was the Ohio legislature, not the court that in 1842 repealed the incorporating act of the German Bank of Wooster, instructing that:

"It shall be the duty of the court of common pleas...or any judge of the supreme court...to restrain said bank, its officers, agents and servants or assignees, from exercising any corporate rights, privileges, and franchises... and force the bank commissioners to close the bank..."

The people, however, were in constant struggle to keep property from walking away with everything. Over time, hundreds of "special" pieces of legislation were passed benefiting one or more corporations and the courts were making law that protected property and contract above all. Even the Constitution of 1802 had proven ineffective in maintaining the power of the majority over the minority with wealth. Growing anti-corporate sentiment among Ohioans brought on a second Constitutional Convention.

"The 1851 Constitution addressed the problem of "special laws" benefiting corporations by agreeing that 'the General Assembly shall pass no special act conferring corporate powers.' ... Most significant are Sections 2 and 3 (of Article XIII) which reinforce the notion that corporate powers and identity exist only to the extent provided by law."

Labor resisted property's claim to illegitimate authority, knowing very early that "privileges given to corporations were privileges denied to workers."

"In 1825 the journeymen printers of Cincinnati formed Ohio's first trade

union, the Franklin Typographical Society." ...In 1827, canal building "workers in Canton, Columbus, Cincinnati and Zanesville formed political parties to gain a voice for working people against the political voice of the wealthy and corporations." However, "while large segments of the public were preoccupied with trying to gain political power, corporations were translating their increasing wealth into bribing state legislators, then... pushing for reduced legislative powers to charter and control corporations. Corporations rewrote the laws governing their creation."

On regulating corporate behavior, rather than controlling corporate natures:

"For the most part regulatory agencies did not seek to control, only to regulate corporations. Gradually these agencies began to assume powers of legislatures, courts and the public."

A law banning any involvement of corporations in the electoral process remained on Ohio's books until 1981.

"Any corporation engaged in business in this state which directly or indirectly pays, uses, offers, advises, consents or agrees to pay or use the corporations' money or property for or in aid of a political party, committee or organization or for or in aid of a candidate for political office, or for a nomination thereto... shall upon conviction (of a violation of this section), be fined not less than five thousand dollars. Whoever, being an officer, stockholder, attorney or agent of such a corporation (which violated this section)... shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both."

Tired of doing the same old thing and getting nowhere? Ready to change the ground rules that have given corporate leaders so much power? Get this research and dialogue going in your community. Order 10 copies and receive, at no charge, Jane Anne Morris's simple guide for demystifying legal research and your local law library, *How to Do Legal Research on Corporations*, a \$10.00 value. To order, send \$25 for 10 copies, or \$4 for a single copy, to American Friends Service Committee, 513 W. Exchange St., Akron, Ohio 44302. Phone: (330) 253-7150, FAX: (330) 996-4664, E-mail: AFSCole@aol.com

THE GREAT CORPORATE SOCIAL SECURITY STING

BY VIRGINIA RASMUSSEN

Watch out! There's a giant sting operation underway. It comes to us as "the crisis" in Social Security.

"Sting" is slang for a meticulously planned and carried out confidence game. Who could be up to such a stunt? That's easy. It's those who defined and promoted the problem. The very same who now offer to come to the rescue, whose private power and purses will swell if any one of their solutions is enacted.

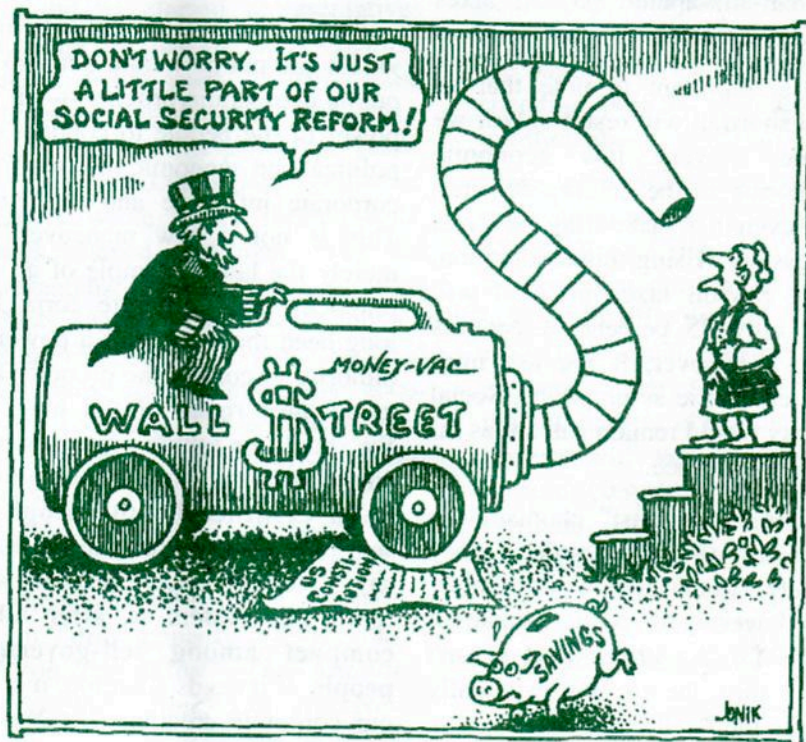
The Real Story

Sixty-four years after the passage of the Social Security Act of 1935, the Social Security system's performance is nothing less than a success story. It was designed as an insurance program, not a tax-sheltered investment plan seeking highest returns. It is a pooled system, not one of individual accounts. This national pension program involves pay-as-you-go funding which means that each generation of retirees is supported by the country's present generation of workers. That is, the FICA (Federal Insurance Contribution Act) amount you pay this month will be used to pay your grandmother's benefits this month. Such a system is inflation-proof because pay-in and pay-out are in same-valued dollars. The surplus is what is left of the amount collected through FICA taxes each year that is not paid out in ben-

efits that same year. Surpluses have accumulated in recent years and are known as the Social Security Trust Funds, or simply the reserves.

The nation's objective was to build a level of future financial stability in most workers' lives, and to do it in a way that connects people of different generations, backgrounds and incomes in the spirit of community. Since the program is backed by a national commitment, it is able to respond to changing conditions of national dimension, thus offering a kind of security that no market-based plan can claim.

About 147 million workers, 96 percent of the workforce, pay into Social Security and will receive benefits in later years. For 60 percent of older Americans, benefits make up more than half of income, lifting 56 percent of the country's elderly out of poverty. This is a result of the program's progressive structure in which low wage earners receive a greater proportion of their lifetime earnings in benefits than do high wage earners. The system provides a disability policy equivalent to \$200,000 and survivor insurance when a wage earner dies. Today more than 7 mil-



lion people, many of them children, receive survivor benefits.

Is the program in fiscal danger? Not at all. **It is remarkably efficient, with administrative costs under one percent of benefits paid (this compares with 20 to 35 percent for corporate insurers).** The fund is currently taking in nearly \$100 billion a year more than it pays out to recipients. The accumulated reserve peaks at over \$3 trillion in 2020 and, according to present estimates, will gradually be used up by 2034. Any future low reserves would be the result of a retiring baby boom generation, as this bulge in the number receiving benefits was accounted for in earlier adjustments through a regular public process. Rather, they would be due to people living longer and to workers having experienced stagnant wages between 1974 and 1994 while corporations were hauling in record-setting profits. Those less-than-anticipated wages, the consequence of corporate decisions defined as beyond the authority of public action, brought less-than-anticipated payroll taxes into the reserves.

It is important to note that an actual shortfall will result only if we assume a very low economic growth-rate in the coming decades, lower even than that during the Great Depression. Using this assumption, annual payroll taxes in 2034 will cover only 75 percent of benefits owed. However, if we use mid-range economic assumptions, Social Security would remain solvent as far as the eye can see.

"This is a crisis," claims Dean Baker of the Economic Policy Institute, "in the same way that a car headed westward in the middle of Kansas faces a crisis. If it doesn't stop or turn, the car will eventually fall into the Pacific Ocean."

Yet, contrary to common sense, **we are told that to "save" Social Security we must privatize it. That is, remove it, in part or in whole, from public control and transfer it to decision-makers in corporate boardrooms.** This counsel comes from those very same boardrooms and from their skills in corporate-funded think tanks and political circles. Brokerage, investment, insurance, advertising and manufacturing corporations will be sweepstakes winners if even a portion of the yearly payroll tax (FICA) is diverted to the stock market. Investment company officials drool at the thought of a possible 130 million new investment accounts and billions of dollars in transaction fees each year, the heavy overhead costs of a privatized system. This in itself is sufficient reason for people to suspect the corporate call for a rescue, but it is not the only reason. It is not even the most important reason.

Corporate "Takings" of Public Wealth and Power

This is a move not only on individual and public wealth but also on public democratic process — on the power of the people to conduct our political and economic life free from corporate influence and distortion. This is not a new maneuver but merely the latest example of an old practice. The corporate form has long been the vehicle of a powerful minority to control the property and governance rights of the majority. We should be asking ourselves **why corporations, inanimate bodies given existence by the people to serve the people, claim to have any say about the Social Security system? The system is, after all, a compact among self-governing people.** If it needs attention, it is not our corporate creations but We the

People who are responsible for taking action. By what authority do these nonbeings sound alarms, shape debates, instill fear, drive bargains, suppress truth and covet our retirement funds?

On reflection, the larger significance of this proposed "taking" becomes clear. Putting money into the stock market enhances the power of corporations. What happens to public protest against corporate violations of workers, communities, environmental and public health, justice and democracy, when most workers have Social Security retirement funds in the stock market? And how will the relationship between our government and corporations be further affected should a percentage of our Social Security Trust Funds be invested privately?

You can be sure these questions were raised by those in corporate boardrooms and answered to their satisfaction: protest will be quieted, government "meddling" relaxed.

The Sting

Should the nation choose to address any Social Security shortfall we can do so without imposing burdens on lower-income employees. There are four million government workers not included in the Social Security program. The shortfall shrinks if we add them. **There is presently a cap on earnings subject to the FICA tax: all wages and salaries above \$72,600 are exempt. As we raise the cap, the shortfall will be proportionately reduced.**

And does it make sense that unearned income — stock dividends, interest, currency speculation winnings — should go untouched with regard to Social Security contributions? Or why not tax burgeoning corporate profits? After all, it was

the low wages paid to labor that contributed to the shortfall in the first place. The latest report of the General Accounting Office (GAO), a Congressional research arm, brings the astonishing news that in each year between 1989 and 1995, nearly one-third of all large corporations operating in the United States paid no U.S. income tax! More than six out of 10 paid less than a million dollars in federal income tax in 1995.

These options would solve any future problems while taking nothing away from lower income earners. Yet they are rarely mentioned as politicians wrangle over reform choices all of which would directly harm wage earners. They include:

- increasing the FICA tax on earnings;
- raising the retirement age;
- reducing spousal benefits;
- taxing benefits received in excess of contributions made;
- trimming the inflation adjustment or cost of living allowance (COLA);
- increasing the computation period used to derive benefit amounts from 35 to 38 years. This means more lower wage years will be averaged into the monthly benefit determination, thus shrinking the payment.

In the bargain, the centerpiece of this corporate-driven rescue would place a portion of a worker's retirement funds in the stock market, either in individual accounts or by government officials investing a percentage of the Social Security Trust Funds in the market. **Retirement security would be left to Wall Street, the volatile market painted as a sure and steady thing.** But playing it carries risks, especially for the untutored. The wealthy who

already have stock holdings would experience handsome gains during the initial and hugely expanded investment period. But low and middle income families, often lacking best advice or driven by fear, would be vulnerable to market fluctuations. In these flush times the buy-in price is high. Is it really smart to bet our Social Security benefits on the present market continuing to climb through the 2020s?

Add to these trepidations the foolhardiness of fueling a corporate growth-machine that imposes ever greater ecological harm, social injustice, and illegitimate government, and one wonders why these proposals have any credibility.

It's also true that a poor future economy would leave vulnerable not only Social Security but the stock market as well, the alternative the corporate rescuers offer with a promise of great returns. Surely they must know we can't have it both ways.

Putting this ruse over on the public and its elected representatives required the best of "sting doctors" and a dozen years of painstaking strategy, dogged tactics and generous financing. The privatizers created and funded think tanks, convened panels, wrote books, formed institutes, shaped coalitions. They did "research," created stories, supplied slants, swayed young voters, lobbied Congress, saturated airwaves, and otherwise seeded insecurity about Social Security. The detractors' message is filled with fabrication and hyperbole. Examples follow:

- **Fear language** is rampant: "an economic problem to dwarf all other national issues"; "a system in "dire jeopardy"; a program "on the skids." *The Atlantic Monthly*, *Time*, and *The New*

Republic are among publications in the chorus.

- **The increasing cost of Social Security and Medicare is bankrupting the nation**, privatizers say. True, the combination of Social Security and the mounting health care bill totals an alarming figure (any number added to a huge number is a huge number). The problem is health care, which requires a separate discussion and solution.
- **Social Security trust funds are used irresponsibly**, opponents say, to cover other government projects and reduce the reported annual budget deficit. Yes, the surplus is lent to the Treasury to finance the Federal deficit with bonds that receive the highest credit rating. If the funds did not exist, the government would be borrowing from private sources at greater interest rates. In the future, should the government have difficulty meeting its Social Security obligations, it would not be the fault of the Social Security System that its reserves have been used elsewhere. It is the nation's taxing, interest and spending policies that must be questioned.
- **Many rich elderly are ripping off young people**, they claim. The reality is that the median household income of the elderly is \$18,000. Fifty percent of those receiving Social Security have incomes under \$15,000. More than 10 percent of seniors live in poverty, with women and people of color composing the majority of them. Underpaid and often unemployed during their working lives, women have paid less into the system and receive less in return. The figures fall to

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\$8,579 for white women, \$6,200 for Black women, and \$5,968 for Hispanic women.

- **It's all a big Ponzi scheme**, critics charge. A Ponzi or pyramid scheme is a con game in which the first person gets money from two people who then receive money from four, and so on. The first in are winners, but when its participants can no longer entice new members those at the bottom of the pyramid lose their money. The analogy derives from the retiring of the baby-boomers, when there will be fewer workers per retiree. But that situation was largely accounted for, as noted earlier. The problem is not boomers so much as it is increasing longevity, and those twenty years of sluggish wages that fed record corporate profits.

The real Ponzi scheme is the stock market itself. Designed on the gambling motif, it carries no assurances. Should a corporation go bankrupt, the largest investors receive first payoff, and preferred stock is honored before common stock.

As the privatizers peddle these unfounded "problems" of the current program, they are mum on the pitfalls of a privatized system:

- the vagaries of the stock market and a global economy;
- the loss of retirement savings for many as a result of bad investments;
- a further widening of the economic gap between rich and poor;
- total costs far in excess of the present system (these include not only all that "corporate overhead" accompanying new investment arrangements, but also the

funds necessary to pay present and pending Social Security recipients caught in the lengthy transition period).

So Where Does This Leave Us?

- Corporations, having seen in workers' yearly FICA contributions a profitable financial asset, are claiming a portion as their own. But that's only the beginning. It's also the co-opting of a compact We the People made with one another. The prescribed debate and "solutions" steal from us an opportunity to evaluate our own program, to define language and analysis suitable to the issue. We are deliberately led past a discussion of values and of commitment to community, our elders and the vulnerable in society.

"The modern corporation [serves] as a buffer between questionable acts and their natural consequences [and] has been used to bring about a state of affairs in the commercial world which rests on neither a just nor a sound basis."

—Robert L. Raymond

*"The Genesis of the Corporation,"
19 Harvard Law Review 350 (1903)*

- The right to be in charge is the people's. The responsibility for uncovering a well hidden history of corporate "takings" of law and culture is also ours. **The work in coming years is to bring this history to light, to understand its pivotal meaning for reframing the language and strategy of popular struggles against illegitimate corporate authority.**

- **The Social Security debate is rich with opportunity for a different kind of activism.** We can take up this challenge in many venues — in city councils, state legislatures and election campaigns, in organizations and classrooms, through newsletters and newspapers, in public squares, workplaces, union halls and pool halls, in synagogues, churches, mosques and around pagan campfires.

It's only people who can save Social Security from its corporate saviors.

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Sources of information for this article include the Economic Policy Institute; The National Academy of Social Insurance; The Social Security Administration; documents from The Program on Corporations, Law and Democracy; *Social Security: The Case for Pay-As-You-Go*, by Dan Cornwell, 1997, Madison Wisconsin; "A Strategy for the Defense and Expansion of the Social Security System," Jason Pramas, *Social Policy*, Fall 1998; numerous journals, news articles and personal communications.

DEMOCRACY

Gets a Life in Arcata

Last November, 58% of the voters in Arcata, California approved Measure F: The Arcata Advisory Initiative on Democracy and Corporations. This initiative called upon the city

(1) to sponsor two town meetings — jointly organized with Measure F advocates — for people to discuss “Can we have democracy when large corporations wield so much power and wealth under law?”;

(2) to create a committee of the City Council responsible for establishing “policies and programs which ensure democratic control over corporations conducting business within the city, in whatever ways are necessary to ensure the health and well-being of our community and its environment.”

The town meetings were held on April 10 and May 6, 1999. BWA interviewed Paul Cienfuegos, a founder of Democracy Unlimited of Humboldt County (DUHC). In May 1998, DUHC founded Citizens Concerned About Corporations, the group which wrote and directed the Measure F Campaign.

BWA: Paul, what’s been happening in Arcata?

PAUL: In the days just before and after the town meetings, people were pouring into our office and telephoning to say that interest in corporate rule and democracy had become part of the town culture. We could feel the thinking and language about citizen activism starting to change. Before Measure F, almost no one talked about links between corporate power and the lack of democracy. Few were aware that corporations exercise the rights of persons, while denying us our human and civil rights. People hadn’t been asking whether the Arcata government was democratic *enough*. But now, more than 500 people — almost five percent of Arcata’s voters — have explored these questions together. And these meetings continue to reverberate throughout Arcata and the North Coast.

BWA: Why did you go to city government? Why didn’t Citizens Concerned About Corporations just call a public meeting on its own?

PAUL: We believe that a major purpose of government is to build the infrastructure of democracy. Corporations have conditioned the public to believe that government’s role is only to build our physical infrastructures, like highways, bridges and schools, and maintain institutions like courts, the police, and the military. From the time of the Revolution many people have felt that our tax dollars and public officials must also facilitate the means by which we educate and govern ourselves. No less than roads, sewers, and jails, this requires time, money, and resources. We are proud that Arcata voted to bring folks together to examine these questions.

BWA: What were the meetings like?

PAUL: About 500 people showed up for the Saturday gathering, and about 140 participated in the second meeting on a weekday evening. Both events were lively, and fascinating in their contradictions. For example, most people said that corporate power was a major problem, but many feared there was not much that could be done about it. Others said they hoped the city could find ways to limit what global corporations do in Arcata. Some suggested that efforts by the people of Arcata to be more democratic could harm local businesses, even drive some out of town. Some business people described government as a bigger problem than giant corporations. From these exchanges, I got the sense that people were hungry to explore where our community — and our society — are heading. They have a need to thrash out their ideas in public about government and corporations, about how this democracy is supposed to work.

BWA: So what’s next?

PAUL: Well, the meetings never got around to considering if or how Arcata

could operate in a more democratic manner to protect the health and well-being of our community. It was difficult for Arcatans to talk about actually writing the rules for giant corporations seeking to operate here. In addition, a number of local business people made crystal clear — particularly at the second meeting — that a City Council committee charged with ensuring democratic control over corporations would make them very, very nervous. So Arcata has a lot more work to do. We aren’t feeling an urgent need to recommend specific changes in city law and policy, but we are committed to getting the City Council committee up and running within the coming year. So we will continue meeting with people here, including business people and public officials. And in response to popular demand, Democracy Unlimited will organize a second study group on the history and democracy of Arcata, the state, and the country.

BWA: Final thoughts?

PAUL: Measure F gave people an opportunity — in community — to talk, to listen, to argue. Some want our government to protect them from giant corporations; some are not sure corporations are a problem; others are wary of government. There were those who were annoyed with us for getting the City involved, for spending public money “to gab.” I’m glad our city brought people together to exchange ideas. That in itself was a big accomplishment. It demonstrated how starved people are to talk about their hopes and dreams for this community, to communicate their sense of possibility along with pangs of helplessness. While the work has been slow going and the meetings offered no consensus about either “the problem” or “solutions,” many Arcatans are now excited and encouraged. We look forward to more public brainstorming, a more democratic community, and maybe even more ballot initiatives.

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