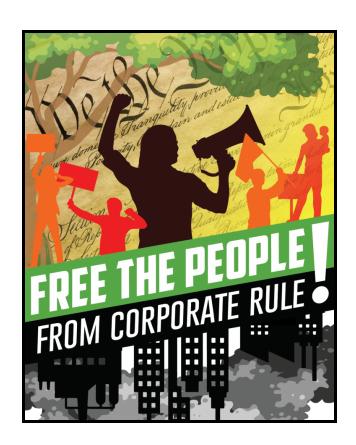


Corporate Rule Transcends Citizens United



A Report on the Totality of Corporate Constitutional Rights Beyond First Amendment Political Free Speech

January, 2020

Move to Amend Mission

Formed in September 2009, Move to Amend is a coalition of hundreds of organizations and hundreds of thousands of individuals committed to social and economic justice, ending corporate rule, and building a vibrant democracy that is genuinely accountable to the people, not corporate interests.

We are calling for an amendment to the US Constitution to unequivocally state that inalienable rights belong to human beings only, and that money is not a form of protected free speech under the First Amendment and can be regulated in political campaigns.

Move To Amend Statement of Values

Move to Amend is a non-partisan, broad coalition of organizations and individuals, who share common values, working together to end corporate personhood and demand real democracy. We welcome all organizations and individuals who embrace these values to join us:

- Accountability and responsibility, both personally and organizationally
- Transparency
- Community
- Movement building
- Dedication to Move to Amend mission, goals and tactics
- Commitment to anti-oppression within ourselves, communities, work places, policies, and representation.

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End Corporate Rule. Legalize Democracy. Move to Amend!

https://movetoamend.org/

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Executive Summary

The Citizens United v. FEC¹ decision expanded corporate ability to influence the outcomes of a core element of our democratic republic: political elections. Contrary to the traditional narrative, the corporate hijacking of democracy and dominance over people, communities and the environment began long before Citizens United. And also contrary to the traditional narrative, the corporate assault on Americans' rights extends far beyond their ability to influence elections.

The 10th anniversary of *Citizens United* in January 2020 creates numerous educational and organizing opportunities. Much deserved attention will be paid to how the decision:

- opened the floodgates to money pouring into federal and state political elections from wealthy individuals and corporate entities (e.g. unions and especially for-profit business corporations) through super PACs,
- increased dramatically "dark money" political spending (i.e. spending funneled through nonprofit organizations, which doesn't have to be publicly disclosed),
- corrupted public policies favoring the super rich and corporate interests via tax cuts, subsidies, perks and protections,
- drowned out the voices of people -- in need of comprehensive health care, good paying jobs, safe communities, financial security, affordable education, decent housing and other basic needs -- who cannot donate or substantially invest in political elections -- who don't donate to or invest in political elections in need of comprehensive health care, good paying jobs, safe communities, financial security, affordable education and housing, and other basic needs,
- > established a precedent for subsequent Supreme Court decisions (e.g. *SpeechNow.org v. Federal Election Commission*), and
- resulted in overturning strong state level campaign finance limits (e.g. in Montana and elsewhere)

A common refrain during the *Citizens United* anniversary period will be how the decision supposedly established *for the very first time* First Amendment-protected "corporate personhood" and money spent in political as "free speech."

Nothing could be further from reality.

Money spent in political elections defined as First Amendment-protected "free speech" originated with the *Buckley v. Valeo* decision in 1976.

¹ 558 US 310 (2010).

⁻

² While "corporate personhood" is more widely understood, the more accurate term, used throughout this report, is "corporate constitutional rights."

Corporations being declared by activist Supreme Courts as "persons" with constitutional rights dates back more than a century.³

These never-intended rights transcend First Amendment political "free speech." They include hijacking the original intent of the First, Fourth, Fifth and Fourteenth Amendments -- that is, to protect *We the People* from government or to provide one group of people -- specifically in the case of the Fourteenth Amendment, freed slaves -- with due process and equal protection rights that white people possessed all along.

The corporate highjacking of the Constitution also includes corporate-friendly Supreme Court interpretations of the Commerce and Contracts Clauses -- which cumulatively for more than a century prior to *Citizens United* were used as legal levers to overturn democratically-enacted laws protecting people, communities and the environment.

The following sections describe how corporate constitutional rights in their totality -- not just political free speech rights -- have harmed workers, residents, homeowners, small businesses, consumers, and local elected officials trying to protect their communities, and plundered the natural world. Maybe most destructively, corporate constitutional rights have virtually eliminated our ability as supposedly self-governing people to self-rule.⁴

The educational and organizing opportunities of the 10th Anniversary of *Citizens United* can't be squandered. We must take take full advantage of the teachable moment to assert that:

- ➤ the negative impact of corporate constitutional rights to individuals, communities, the nation and natural world are far wider and deeper than corporate money spent in elections, and
- > simply reversing *Citizens United* through a constitutional amendment will not end corporate rule or create a democracy that represents *We the People*, not corporate interests.

The 10th anniversary of *Citizens United* is also a movement mobilizing moment. As awareness of the power, authority and rights of money spent in elections and by corporations to govern rises, the opportunity to build an authentically inclusive democracy movement led by people from communities that have been historically most adversely affected also increases. People are on the move in the U.S. and abroad demanding transformative alternatives to the growing crises of the climate, health care, food, housing, education, income and wealth, criminal justice, and personal debt, among others.

³ Personalizing the Impersonal: Corporations and the Bill of Rights, Carl Mayer, Hastings Law Journal, Vol. 41 (1990), Issue 3

⁴ The reality is that authentic self-rule/self-governance/democracy only existed at the founding of our nation for white, male, property owners. Rights obtained by all other persons (e.g., women, people of color) were only achieved through massive pressure from grassroots social movements.

Fundamental problems require fundamental solutions. Move to Amend's We the People Amendment (HJR 48) -- a constitutional amendment calling for abolishing all corporate constitutional rights and the doctrine that money is speech -- is one part of the fundamental solution. Hundreds of communities and several states have passed resolutions and ballot initiatives calling for such an amendment that not only calls for ending money as free speech but also for abolishing all corporate constitutional rights. This wide spread support is based on the recognition that so many of the issues we care about can't be realistically addressed until all corporate constitutional rights are terminated.

Alternative legislative or constitutional half measures that only address *Citizens United* or even calling for ending "money as speech" are based on what are deemed "possible" or "achievable" in the present. They fail, however, to comprehend that the current political, economic, social and environmental realities are unsustainable and reaching critical tipping points. What many perceive as impossible today will become essential and inevitable demands in the near future -- assuming those with foresight educate and organize now to build an inclusive, grassroots, independent and nonviolent democracy movement that has real power to create transformative change.

It is Move to Amend's hope that this report will provide both the information and inspiration to take action to end corporate rule and constitutional rights in all its forms. It's up to us, people at the grassroots -- especially those who've directly experienced the harms of corporate rule and rights -- to become the leaders of this movement. While we need support from public officials "on the inside," the history of social movements in his country clearly demonstrates that it's people organizing and mobilizing "on the outside" that create the culture and power to force systemic change.

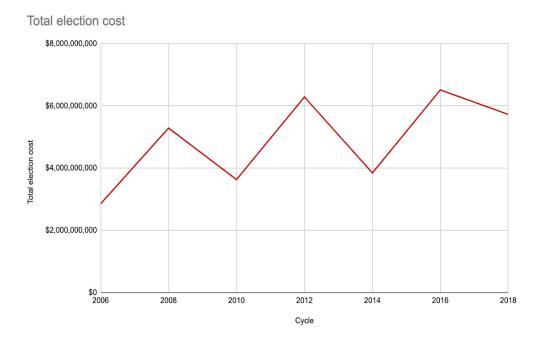
We are the leaders we've been waiting for. Join us to take action to create real democracy...for the very first time.

Citizens United v. FEC

In 2010, the Supreme Court began its systematic campaign to gut campaign finance regulations with the notorious *Citizens United* decision. The Court struck down regulation after regulation over the following years, reaffirming their commitment to a First Amendment interpretation that considers political contributions a form of protected speech and constricts legislative authority to regulate campaign contributions.

Total election cost increases⁵

The impact of those disastrous rulings is clear: since 2010, campaign costs have grown by roughly \$2 billion. And much of that dramatic increase, as later graphs will show, is courtesy of skyrocketing dark money contributions--unlimited, undisclosed contributions to organizations that can conceal their donors.



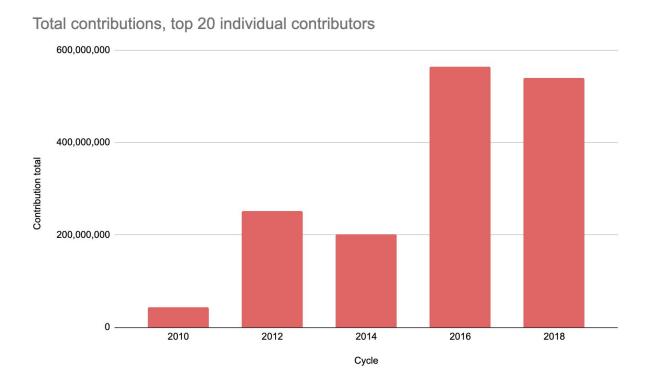
Source: Center for Responsive Politics

Individual contributions from the super-wealthy accelerate

Another disturbing post-*Citizens United* trend is astronomical political contributions from the super-wealthy. In this case, the Supreme Court case at fault is not *Citizens United* directly but *McCutcheon v. FEC*, a 2014 case that abolished caps on campaign contributions. *Citizens United*,

⁵ Note: None of the monetary values are adjusted for inflation. Adjusted numbers are practically impossible to find, and as the Federal Reserve has failed to meet even its modest 2% inflation rate goal over recent years inflation doesn't significantly alter these graphs' trends.

though, played a critical role in this catastrophic decision; key parts of Justice Roberts's opinion, including his judgments that the government can only regulate explicit *quid pro quo* corruption (not, for example, indirect systemic corruption caused by massive campaign contributions) and that disclosure of campaign contributions constitutes adequate protection against political corruption, relied on precedent established in *Citizens United*. Campaign contributions from the ultra-wealthy shot upwards following *McCutcheon*, dealing a blow to ordinary Americans' rights and to our democracy itself.

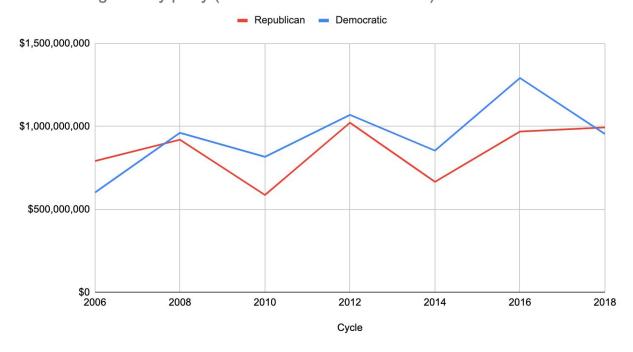


Source: Center for Responsive Politics

Party committee fundraising grows

Party committee fundraising totals have steadily increased since *Citizens United*, with both major parties contributing to the increase. The following totals are donations to party and party-affiliated committees, donations that are fully disclosed and capped at \$35,500 per year. Even though Super PACs and other dark money organizations often have a strong party or ideological alignment, because they are independent-expenditure groups that cannot collaborate with a party or candidate committee their fundraising totals are excluded from this graph.

Fundraising total by party (main + affiliated committees)



Newly legalized Super PACs dominate dark money fundraising

Dark money groups have played an increasingly influential part in election funding. Although 501(c)(4) organizations--nonprofits working for "social welfare purposes," allowed to push a legislative agenda and accept unlimited and undisclosed contributions--have seen a moderate reduction in their political clout since *Citizens United*, Super PACs have more than compensated for 501(c)(4)s' reduced influence. Super PACs have poured millions of undisclosed, often corporate dollars into political campaigns, and their influence is increasing at an astronomical rate; their donations in presidential years have nearly doubled over the last two election cycles, while their midterm contributions have more than doubled. At this rate, dark money will soon become the most important source of political funding.

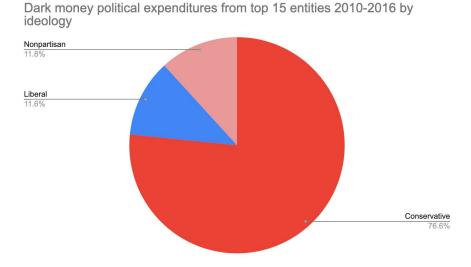
Dark money group expenditures by group classification



Source: Center for Responsive Politics

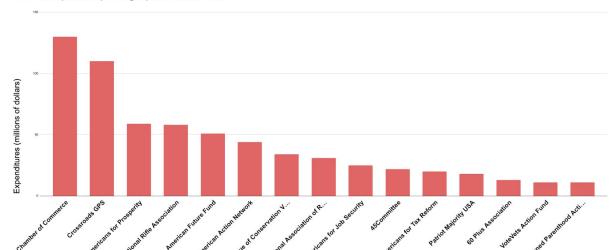
Dark money since 2010

Although both parties have raised similar levels of campaign committee funds, Republicans have been the primary beneficiaries of post-*Citizens United* dark money.



Source: Issue One analysis of data from the Center for Responsive Politics and Federal Election Commission

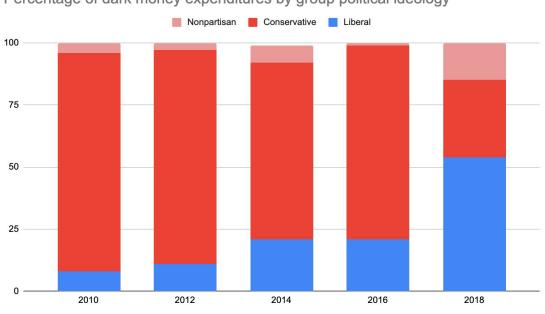
While a few liberal groups--the League of Conservation Voters and Planned Parenthood Action Fund best known among them--are among the top 15 independent expenditure groups, the vast majority of the groups are conservative.



2010-2016 political spending reported to the F.E.C.

Source: Issue One analysis of data from the Center for Responsive Politics and Federal Election Commission

From 2010-2016, Republicans dominated independent expenditures. The 2018 election cycle reversed that pattern: for the first time, liberal dark money groups outraised and outspent their conservative counterparts.



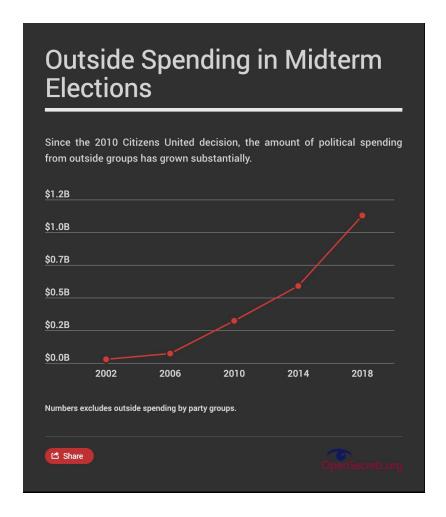
Percentage of dark money expenditures by group political ideology

Source: Center for Responsive Politics

As independent expenditure organizations become increasingly critical for political success, Democrats--including a group of former Obama staffers--are developing Super PAC fundraising capacity to rival Republican fundraising juggernauts like the NRA. Amending the Constitution to remove corporate influence (corporations are, after all, some of the most influential Super PAC donors) and make it clear that money is not a form of protected speech is not a Democratic or Republican reform; it's a reform designed to address a campaign funding system that both major parties have bought into, a system that attacks the very core of American democracy.

Citizens United, ten years later

Ten years after *Citizens United*, the ruling's impact is clear. Billions of dollars of dark money--and substantially, corporate money--are now flowing into American elections, initially tipping the scales in favor of billionaire Republicans but now undermining both major parties' integrity.



We the People are fighting back. 20 states, both those that trend liberal and those that trend conservative, have passed resolutions condemning the *Citizens United* decision and calling for a constitutional amendment. Individual communities, too--over 800 of them--have banded together to stand up against corporate power and reassert their rights.

How Corporate Constitutional Rights Harm You, Your Family, Your Community, Your Environment, and Your Democracy

About Move to Amend

Formed in September 2009, Move to Amend is a coalition of hundreds of organizations and hundreds of thousands of individuals committed to social and economic justice, ending corporate rule, and building a vibrant democracy that is genuinely accountable to the people, not to corporate interests.

We are calling for an amendment to the U.S. Constitution to unequivocally state that inalienable rights belong to human beings only, and that money is not a form of protected free speech under the First Amendment and can be regulated in political campaigns. Although several organizations seek to overturn the Supreme Court's First Amendment decision in the *Citizens United* case, our amendment calls for the abolition of *all* corporate rights.

Corporations Do Not Need Constitutional Rights

- > A corporation is a vehicle to accumulate capital and do business.
- > State law already protects the legitimate functions of corporations: to act as one entity, to transact business, to own property, to sue and be sued in a court of law, and to enter into contracts. None of these functions require constitutional rights. MTA does not object to any of these.
- Constitutional rights are more powerful than statutory rights and have legal priority over them.
- ➤ Early in our nation's history, most corporations could only be formed by state law granting a corporate charter. These charters typically limited corporations to a specific project, e.g., building a bridge, to serve the public good. Corporations could only exist for a limited time, typically 15 to 20 years, unless the state legislature issued a new charter.
- ➤ Modern corporations exist to make as much money as possible. They have used this money to buy political power that often defies the will of the people. When courts give constitutional rights to a corporation they are giving constitutional rights to property, not people. Giving them more power--constitutional rights that supersede the rights of 'We the People'-- harms democracy.

Corporate Constitutional Rights Have No Legal Foundation

- The Constitution does not mention corporations. Therefore it gave them no rights. One of the causes of the American Revolution was unfair treatment of colonists by the East India Company, a British corporation. Early Americans feared corporations and restricted their power.
- ➤ The fiction that corporations have constitutional rights arose out of a court reporter's false, unofficial comment that the Supreme Court had given corporations the same 14th amendment rights as natural persons in Santa Clara County v Southern Pacific Railroad, 118 U.S. 394 (1886). (Comments have no legal validity.) The Court's decision made no such ruling. In fact, the Court explicitly ruled that it would not decide the constitutional question because the case could be (and was) decided on other grounds. For more information, see Hartmann, Unequal Protection: How Corporations Became "People" and How You Can Fight Back, 2d ed., 2010, pp. 14-48.
- ➤ The 14th Amendment does not mention corporations or give them the constitutional rights of persons. Section 1 of this amendment states that no state can "deprive any person of life, liberty, or property." Corporations are not alive and cannot be incarcerated. The purpose of the 14th Amendment was to insure the rights of recently freed slaves.
- ➤ Cases that create or follow CCRs ignore these facts. The Supreme Court has <u>never</u> explained or justified why an artificial person like a corporation should have the same constitutional rights as natural persons. Every case granting CCRs based on *Santa Clara County v. Southern Pacific Railroad* rests upon an unsupported falsehood. Bottom line: CCRs were invented by the combined actions of one court reporter and later by Supreme Court decisions resting on this unsupported falsehood.

Harm Caused By Corporate Constitutional Rights:

4th Amendment—Search and Seizure Surprise Inspections of Business Premises Prohibited

When an OSHA inspector tried to do a routine inspection of Barlow's Inc., an electrical and plumbing installation business, the company's president refused to allow the inspector to enter the nonpublic employee area. Relying on the Fourth Amendment's "right of the people to be secure in their persons [and] houses... against unreasonable searches and seizures" the company's president objected that the inspector lacked a search warrant, even though Section 8(a) of the Occupational Safety and Health Act of 1970 (OSHA) did not require a search warrant for inspections of safety hazards and violations of OSHA regulations. The Secretary of Labor sought an order to compel compliance with the OSHA inspection. Rejecting the Secretary of Labor's argument that surprise inspections are reasonable and essential to OSHA's enforcement, the U.S. Supreme Court ruled that OSHA's Section 8(a) was unconstitutional because it authorized inspections without a warrant. ⁶

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⁶ See *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978)

In another case, the U.S. Supreme Court overruled the conviction of a business owner who was convicted of refusing to allow the fire department to enter his business for a routine, random inspection. Citing the 4th Amendment, the Court required an administrative warrant to enter commercial premises. ⁷

Even though the 4th Amendment's language specifies only human beings, their homes and personal effects, these decisions treat commercial entities like persons. The result is that governmental attempts to protect the public from a myriad of dangers stemming from private commercial activities (e.g., food contamination, drug impurities, automobile defects, dangerous conditions, worker safety violations, and environmental hazards) are thwarted by removing the advantage of surprise inspections.

5th Amendment—Environmental Regulation as Takings State Statute to Prevent Sinking Homes from Underground Mining Struck Down

The Mahons owned the surface rights of land upon which they built their home. The deed to their property expressly permitted the Pennsylvania Coal Company to mine coal under the surface of their land. Relying on the Kohler Act, a 1921 state statute addressing [issues related to] land sinking from coal mining, the Mahons sued a corporation to prevent its coal mining operations from causing their home to sink. At the coal corporation's urging, the Supreme Court invalidated the Kohler Act, saying that it violated the 5th amendment takings clause forbidding a taking of private property "for public use and without just compensation."

Despite the fact that the Kohler Act prohibited coal mining that would cause subsidence of public properties (e.g. public buildings and roads) as well as private dwellings, the Supreme Court found that the purpose of the Kohler Act was to protect a small group of private individuals rather than the lives and safety of the general public. This finding precluded the Mahon's contention that the Kohler Act was, as the dissent argued, constitutionally valid as an exercise of the state's police power to protect public health and welfare.)⁸

Commerce Clause

State and Local Governments Forced to Accept Waste, Including Hazardous Waste, from Outside Communities for Disposal

The Supreme Court, having found that solid and toxic waste is interstate commerce, has used the Commerce Clause to invalidate state or local laws that sought to halt or limit importation of solid and hazardous waste for disposal. For example, New Jersey prohibited the importation of waste unless this waste was used, recycled, treated, processed or recovered. But in *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978) the Court ruled that these state regulations burdened interstate commerce in violation of the Commerce Clause. Similarly, in *Fort Gratiot*

⁷ See v. City of Seattle, 387 U.S. 541, 545-546 (1967).

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⁸ Pennsylvania Coal Co. v, Mahon, 260 U.S. 393 (1922). (The Supreme Court has defined the "police power" as being coextensive with inherent state sovereignty, Nebbia v. New York, 291 U.S. 502, 524 (1934). States often use the police power to legislate protections for public health, safety, and morality.)

Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353 (1992) the Court ruled that a county could not regulate waste based on the county of origin, whether interstate or intrastate, without violating the Commerce Clause. And in *Chemical Waste Management*, *Inc. v. Hunt*, 504 U.S. 334 (1992) the Court ruled charging more for out-of-state waste than in-state waste also violated the Commerce Clause.

These cases disregard the legitimate interests state and local governments have in protecting their health, safety, and natural resources, traditionally appropriate subjects for protection by the police power. Hazardous waste can cause disease, birth defects, genetic damage, crippling, blindness, and death. Transporting hazardous waste creates additional danger over long distances on highways shared by the public. Hazardous waste facilities often result in water pollution from leaking, explosive methane, fires, and aesthetic degradation, and are often sited near low-income neighborhoods and communities of color.

Although none of these cases gave corporations additional CCRs, they illustrate how the judicial invention of CCRs has enabled corporations to profit from other constitutional provisions at the expense of people, local governments and states trying to protect against the importation of hazardous waste.

First Amendment--Commercial speech protection CCRs prevent state from regulating tobacco advertising near schools

A Massachusetts law prohibited cigarette, cigar, and smokeless tobacco advertising within 1,000 feet of schools and playgrounds in the state. The Federal Cigarette Labeling and Advertising Act (FCLAA), prescribes mandatory health warnings for cigarette packaging and advertising, and preempts similar state regulations,. This federal law preempted the Massachusetts state law prohibiting tobacco advertising within 1,000 feet of schools and playgrounds. A tobacco corporation, Lorillard, challenged this advertising ban for cigars and smokeless tobacco. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001)

The Lorillard case pitted the children's health and the state's police power to protect the health, safety and welfare of its citizens against the tobacco industry's motive to maximize profits by addicting children at an early age to make them lifelong customers. The children and the state lost! Worried parents also lost.

In its analysis, the Court relied on a four pronged test enunciated in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) to determine whether the Massachusetts law could survive Lorillard's constitutional challenge. According to this test:

- 1. The speech must concern lawful activity and not be misleading
- 2. The government must have a substantial interest
- 3. The law or regulation must materially advance the government's substantial interest

4. The regulation must be narrowly tailored. According to the Hudson court, the regulation must be "not more extensive than is necessary to serve that [substantial] interest.

After reviewing case law and the scientific literature the Court found that the tobacco advertising was not misleading and the government had a substantial interest in protecting children. The state demonstrated its interest in protecting children from tobacco advertising. Studies show a link between tobacco advertising and a demand for buying tobacco products. Regarding youngsters, "[t]he Surgeon General's report and the Institute of Medicine's report found that 'there is sufficient evidence to conclude that advertising and labeling play a significant and important contributory role in a young person's decision to use cigarettes or smokeless tobacco products." "Another study revealed that 2% of 6 year olds and 52% of children ages 3 to 6 recognized 'Joe Camel,' the cartoon anthropomorphic symbol of R. J. Reynolds' Camel brand cigarettes." "After the introduction of Joe Camel, Camel cigarettes' share of the youth market rose from 4% to 13%."

After its review, the Court found that the tobacco advertising advanced a substantial governmental interest in protecting children. Despite this the Court invalidated the tobacco regulations because it found that the state law did not meet the fourth requirement of the Hudson test requiring that the regulation be narrowly tailored. The Court said "a speech regulation cannot unduly impinge on the speaker's ability to propose a commercial transaction and the adult listener's opportunity to obtain information about products." The Court decided that the "cost" of speech regulation in this case was too burdensome on this commercial speech.

Move to Amend's Progress

- ➤ More than 460,000 people have signed Move to Amend's petition which calls for rejecting the U.S. Supreme Court's *Citizens United* ruling and all other cases that invented CCRs, and moves to amend our Constitution to firmly establish that money is not speech, and that human beings, not corporations, are persons entitled to constitutional rights.
- > Hundreds of active Move to Amend members regularly meet in dozens of local affiliate groups across the nation.
- ➤ Move to Amend members have lobbied for and helped pass more than 330 resolutions or ballot measures in support of an amendment with the same objectives as its amendment. Six states have passed similar resolutions: California, Hawai'i, Illinois, Minnesota, Montana, Vermont. Another 135 resolutions support Move to Amend's objectives in part.
- ➤ H.J.R. 48, the "We the People Amendment" has currently has 63 co-sponsors in the U.S. House of Representatives in the 116th Congress.

Move to Amend's Proposed 28th Amendment to the U.S. Constitution

Introduced in Congress as House Joint Resolution 48 on February 22, 2019:

Section 1. The rights protected by the Constitution of the United States are the rights of natural persons only. Artificial entities, such as corporations, limited liability companies, and other entities, established by the laws of any State, the United States, or any foreign state shall have no rights under this Constitution and are subject to regulation by the People, through Federal, State, or local law. The privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.

Section 2. Federal, State and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, to ensure that all citizens, regardless of their economic status, have access to the political process, and that no person gains, as a result of that person's money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure. Federal, State, and local governments shall require that any permissible contributions and expenditures be publicly disclosed. The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.

Section 3. Nothing contained in this amendment shall be construed to abridge the freedom of the press.

Corporate Hijacking of the 1st Amendment [political "free speech"]

Corporations and the U.S. Constitution

Corporations are not mentioned in the U.S. Constitution. They are legal creations of governments, intended to provide useful goods and services. No voter, citizen, social movement or elected official has ever granted corporations constitutional rights – intended exclusively for human beings. Corporate entities have gained constitutional rights solely from rulings by activist Supreme Court Justices.

What is the 1st Amendment of the U.S. Constitution?

The Amendment, one of ten known as the "Bill of Rights" and added to the Constitution all at once, declares, in part, that governments shall "make no law. . . abridging the freedom of speech."

When did corporations first win this constitutional right?

1978 - First National Bank of Boston v. Bellotti, 435 U.S. 765

The Supreme Court gave corporations political "free speech" protections under the 1st Amendment when the Court, in a controversial decision, reversed a Massachusetts law prohibiting corporations from spending money to influence legislation unrelated to their business. Supreme Court Justice William Rehnquist stated in his dissent that, "the Congress of the United States, and the legislatures of 30 other States of this Republic have considered the matter, and have concluded that restrictions upon the political activity of business corporations are both politically desirable and constitutionally permissible." Laws preventing corporate spending in political elections in those 30 states were, nevertheless, struck down and, thus, allowing for the first time corporate speech on public policy issues.

Notable cases where this constitutional right was hijacked by corporations:

The *Bellotti* case is the most notable and significant Court decision that hijacked the political free speech rights of the 1st Amendment.

What about Citizens United?

It's widely believed that the *Citizens United vs. FEC* Supreme Court decision of 2010 was the first time money spent in political elections was equated as 1st Amendment-protected free speech and when corporations were first granted corporate constitutional rights. In fact, the decision was based on neither doctrine, but rather on (a) the right of persons to listen to speech, regardless of the source, and (b) the corporation simply being an association of people with collective free speech rights.

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⁹ 435 U.S. 765, 823

A person has no more the constitutional right to "listen" as (s)he has the right to speak at will, for as long as (s)he may want for hours on end before, say, a city council meeting – including being prohibited from speaking at all if the message isn't germane or the person may live outside the community. Should one person be allowed to advocate for the murder of a politician if another person claims (s)he has the right to "listen" or hear such speech? Of course not. Reasonable limits or in some cases prohibitions on both speaking and hearing are legitimate. Furthermore, nowhere was there reference in *Citizens United* to the rights to be heard from individuals whose voices are drowned out since they aren't wealthy or don't own a corporation. These rights are completely absent when calculating corporate free speech.

When it comes to corporations being nothing more than an association of persons, corporate leaders want it both ways. When it's convenient for corporations to be separate from their shareholders to avoid being personally liable for a corporate malfeasance, corporate agents argue that there's an impenetrable shield between the separate corporate entities and the individuals (employers and/or shareholders and bondholders) connected to them. Yet, when it's convenient for corporations to wield their immense political influence through lobbying and political campaign donations (or investments), then the corporate "voice" is simply the "harmony" of the collective human voices of those associated with it.

It's absolutely true, however, that the effect of the *Citizens United* decision was a dramatic increase of the political influence of corporate entities and wealthy individuals in elections. While corporations are still prohibited by law from donating directly to candidates and candidate campaigns, their political influence in shaping political messages through the funding of political campaign advertisements has been profound.

How corporate hijacking of this amendment harms you, your family, communities and the environment

The flood of money from corporations (as well as from wealthy individuals) in elections is a major factor in what issues are publicly discussed (and how they're discussed), whose interests are heard and who gets elected. Problems and solutions important to low-income, working class, people of color and other historically-oppressed constituencies are not addressed during political campaigns – as well as issues and solutions addressing our increasing environmental crisis. An increasing amount of political money is shielded by phony "front groups" in which donors are not disclosed and known (i.e. called "dark money").

Corporate-funded political ads either distort issues most favorable to corporate interests or attack or support political candidates on superficial concerns. Public negativity from the onslaught of attack ads generates political cynicism, fueling a belief that all politicians are corrupt, which can suppress voter participation. Candidates barraged by negative attack ads funded by corporate entities often lose unless there are other corporate entities on their side and/or who can counter "money power" with grassroots "people power" of supporters who more directly engage voters. Fearful of corporate-funded attack ads, many candidates avoid addressing certain issues and doing anything about those issues even if elected. These issues are often those of greatest concern to people without the wealth to donate to candidates.

Prominent opposition to the corporate hijacking of the 1st Amendment

Dissenting in the *Bellotti* case, Supreme Court Justice White asserted the impact of this decision: "It has long been recognized, however, that the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process...The State need not permit its own creation to consume it." ¹⁰

Take Action

We will never have an authentic democracy so long as corporations possess any inalienable constitutional rights, including corporate hijacking of the 1st Amendment by the Supreme Court. That's why Move to Amend educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

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¹⁰ 435 U.S. 765, 809

Corporate Hijacking of the 1st Amendment [excluding political free speech]

What is the First Amendment of the U.S. Constitution?

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

When did corporations first win the "right not to speak and commercial speech" constitutional rights?

1974 - Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241

The U.S. Supreme Court overturned a Florida "right of reply" state law granting political candidates the right to equal space to respond to criticism by a newspaper of their record. The case established the right not to speak -- also called "negative free speech" -- as a First Amendment protection.

Notable cases where this constitutional right was hijacked by corporations:

1980 - Central Hudson Gas & Electric Corp., v. Public Utilities Comm'n, 447 U.S. 557
The State of New York enacted a regulation during the mid 1970's energy crisis banning all utility corporations from promoting the use of electricity in advertisements. The U.S. Supreme Court overturned the regulation claiming it violated the corporation's "commercial speech" rights. The state's obligation to protect the welfare of its residents, expressed by promoting energy conservation, was in direct conflict with the utility corporation's goal of encouraging greater electricity usage and, thus, increasing its profits.

Corporate "commercial speech" rights preempted the state's right to protect the welfare of its residents.

1986 - Pacific Gas & Elec. Co. v. Public Utilities Comm'n, 475 U.S. 1

The U.S. Supreme Court decided that PG&E was not required to allow a ratepayer organization to include counter information to the corporation's on issues in their billing envelope. This upheld the corporation's right not to speak (i.e. "negative speech" rights) and protected the corporation's "freedom of mind."

1996 - International Dairy Foods Association v. Amestoy, 92 F.3d 67 (2nd Cir.)

The U.S. Second Circuit Court of Appeals overturned a Vermont law requiring the labeling of all products containing bovine growth hormones (rBST). The decision affirmed the rights of produce producers containing rBST "not to speak" (i.e. not to be forced to label "this product contains rBST") over the legitimate rights of consumers to know factual information that many believed protected their health.

2014 - Burwell v. Hobby Lobby Stores, 134 S. Ct. 2751

A landmark decision allowing closely held for-profit corporations to be exempt from a law its owners religiously object to if there is a less restrictive means of furthering the law's interest. The decision permitted the corporation to deny contraceptive health care coverage to female employees. It's the first time that the court recognized a for-profit corporation's claim of religious belief. The decision was an interpretation of the Religious Freedom Restoration Act (RFRA). It didn't directly address whether such corporations are protected by the free exercise of religion clause of the 1st Amendment.

How corporate hijacking of this amendment harms you, your family, communities and the environment

Corporations have hijacked the First Amendment in multiple ways. Their constitutional "right" to donate (or invest) in political campaigns (i.e. political free speech) is the most widely recognized, but is by no means the only instance where courts have preempted the needs and will of the public in favor of corporate interests.

"Commercial," "negative free speech," and "religious" rights represent other aspects of the First Amendment that have been used by corporate entities to defy the legitimate rights of people to know factual information; the authority of government to protect the health, safety and welfare of residents; the provision of basic health needs of employees; and the ability to hold corporations publicly accountable.

The focus of commercial and negative free speech rights-related court cases has centered on the conflict over rights --i.e., the rights of corporations to "remain silent" vs. the public's right to know. The presumption has been that people and corporations have equal claims to rights with cases decided on the merits of the presentation of rights by each side. Absent has been the basic issue of authority -- do *We the People* or not have the ultimate sovereign authority (what some call "democracy") to determine the extent of corporate claims to free speech rights in specific cases and claims in general to any human rights.

Prominent opposition to the corporate hijacking of the First Amendment

Dissenting in the *Pacific Gas & Electric Co. v. Public Utilities Commission* decision, Supreme Court Justices Rehnquist, White and Stevens asserted: "To ascribe to such entities an 'intellect' or 'mind' for freedom of conscience purposes, is to confuse metaphor with reality." Separately, Justice Rehnquist stated, "[n]or do I believe that negative free speech rights, applicable to individuals and perhaps the print media, should be extended to corporations generally." ¹¹

Justice Leval stated in his dissent in the *Amestoy* decision:

"[T]he true objective of the milk producers is concealment. They do not wish consumers to know that their milk products were produced by use of rBST because there are consumers who, for various reasons, prefer to avoid rBST...In my view, the interest of the milk producers has little entitlement to protection under the First Amendment. The case law that has developed under the doctrine of commercial speech has repeatedly emphasized that the primary function of the First Amendment in its application to

¹¹ 475 U.S. 1, 33

commercial speech is to advance truthful disclosure -- the very interest that the milk producers seek to undermine."¹²

Take Action

Lack of an authentic democracy is due not only to corporate campaign donations (or investments) or domination of the media. We'll never have an authentic democracy so long as corporations possess any inalienable constitutional rights, including corporate hijacking of *any* portion of the First Amendment by the Supreme Court. That's why Move to Amend educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

¹² 92 F.3d 67 (2nd Cir.), 80

Corporate Hijacking of the 4th Amendment

What is the 4th Amendment of the U.S. Constitution?

One of the original Bill of Rights (first 10 Amendments), it was designed to protect individual right to privacy, including protection against unreasonable searches and seizures without a warrant.

When did corporations first win this constitutional right?

1906 - Hale v Henkel, 201 U.S. 43

Corporations didn't have privacy protections prior to this case. Many corporate charters stipulated that books and records of corporations had to be transparent to ensure public accountability.

An especially notable case where this constitutional right was hijacked by corporations:

1978 - Marshall v. Barlow's Inc., 436 U.S. 307

<u>Surprise Inspections of Business Premises Prohibited</u>

When an OSHA inspector tried to do a routine inspection of Barlow's Inc. (an electrical and plumbing installation business), the company's president refused to allow the inspector to enter the nonpublic employee area. Relying on the 4th Amendment's "right of the people to be secure in their persons [and] houses . . . against unreasonable searches and seizures," the company's president protested that the inspector lacked a search warrant. This protest should have been dismissed because Section 8(a) of the Occupational Safety and Health Act of 1970 (OSHA) did not require a search warrant for inspections of safety hazards and violations of OSHA regulations, which led the Secretary of Labor to seek an order to compel compliance with the OSHA inspection. Rejecting the Secretary of Labor's argument that surprise inspections are reasonable and essential to OSHA's enforcement, the Supreme Court ruled that OSHA's Section 8(a) was unconstitutional because it authorized inspections without a warrant.

How corporate hijacking of this amendment harms you, your family, communities and the environment

These judicial decisions treat artificial commercial entities like natural persons, even though the 4th Amendment's language seems to contemplate only human beings, their homes and personal effects. The result is that governmental attempts to protect the public from a myriad of dangers stemming from private commercial activities (e.g., food contamination, drug impurities, automobile defects, and environmental hazards) are thwarted by removing the advantage of surprise inspections, thus allowing businesses to hide, alter or disguise dangerous conditions.

Members of the Court disagreed with granting corporations 4th Amendment rights

In his dissent in Hale v Henkel, Justice Harlan stated, that as a result of this decision, "...the power of the government, by its representatives, to look into the books, records and papers of a corporation of its own creation, to ascertain whether that corporation has obeyed or is defying the law, will be greatly curtailed, if not destroyed."¹³

Take Action

Lack of an authentic democracy is due not only to corporate campaign donations (or investments) or domination of the media. We'll never have democracy so long as corporations possess any inalienable constitutional rights, including never-intended 4th Amendment search and seizure privacy rights. That's why Move to Amend educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

¹³ 201 U.S. 43, 78

Corporate Hijacking of the 5th Amendment

What is the 5th Amendment of the U.S. Constitution?

When did corporations first win provisions of this constitutional right?

1893 - Noble v. Union River Logging R. Co., 147 U.S. 165 - "due process" clause
The granting by the Secretary of the Interior to a railroad corporation of a public land
right-of-way could not be revoked by a subsequent Secretary without extending due process of
law to the corporation. 1922 - Pennsylvania Coal Co. v. Mahon, 260, U.S. 393 - "Takings Clause"
(see below). 1962 - Foo v. United States, 369 U.S. 141 - "double jeopardy" clause
A corporation could not be retried after a court judgment of acquittal following government
presentation of evidence.

An especially notable case where this constitutional right was hijacked by corporations (addressing the "taking" and compensation of corporate property):

1922 - Pennsylvania Coal Co. v. Mahon, 260 U.S. 393

State Statute to Prevent Sinking from Underground Mining Struck Down

The Mahons owned the surface rights of land upon which they built their home. The deed to their property expressly permitted the Pennsylvania Coal Company to mine coal under the surface of their land. Relying on the Kohler Act, a 1921 state statute addressing [issues related to] land sinking from coal mining, the Mahons sued a corporation to prevent its coal mining operations from causing their home to sink. At the coal corporation's urging, the Supreme Court invalidated the Kohler Act, saying that it violated the 5th amendment takings clause forbidding a taking of private property "for public use and without just compensation."

Despite the fact that the Kohler Act prohibited coal mining that would cause subsidence of public properties (e.g. public buildings and roads) as well as private dwellings, the Supreme Court found that the purpose of the Kohler Act was to protect a small group of private individuals rather than the lives and safety of the general public. This finding precluded the Mahon's contention that the Kohler Act was, as the dissent argued, constitutionally valid as an

exercise of the state's police power to protect public health, safety and welfare. Note: states often use the police power to legislate protections for public health, safety, and morality.)

How corporate hijacking of this amendment harms you, your family, communities and/or the environment

Regulatory laws are one of the tools of our government to protect the health, safety and welfare of its residents as well as the natural environment. These include protections of food, medicine, housing, electronics, vehicles, and thousands of other items in our society -- as well as land, air and water. These protections should supersede corporate property rights and profits. Legally mandated compensation of lost present and future corporate profits deters the passage of democratically enacted regulatory law protecting public health, safety and welfare. Such 5th Amendment protections enables the corporate minority to evade legislative measures adopted by the majority to secure public interests – a never-intended entitlement that negates the people's right to a republican form of government.

Members of the Court disagreed with granting corporations 5th Amendment rights Justice Brandeis stated in his dissent in *Mahon*:

"Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the state of rights in property without making compensation. But restriction imposed to protect the public health, safety or morals from dangers threatened is not a taking. The restriction here in question is merely the prohibition of a noxious use." 14

Take Action

Lack of an authentic democracy is due not only to corporate campaign donations (or investments) or domination of the media. We'll never have an authentic democracy so long as corporations possess any inalienable constitutional rights, including never-intended 5th Amendment due process, takings and double jeopardy rights. That's why Move to Amend educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

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¹⁴ 260 U.S. 393, 417

Corporate Hijacking of the 14th Amendment

What is the 14th Amendment of the U.S. Constitution?

It's one of three Amendments enacted during the Reconstruction era (along with the 13th and 15th) to establish civil rights for freed slaves. It contains three major provisions:

- The "Citizenship Clause" grants citizenship to all persons born or naturalized in the United States.
- The "Equal Protection Clause" says that a state may not deny to any person within its jurisdiction the equal protection of the laws. (Equal protection means the same rights, privileges, and protections to all citizens are guaranteed.)
- The "Due Process Clause" declares that states may not deny any person "life, liberty or property, without due process of law." (Due process means fair treatment in the judicial system to everyone.)

When did corporations first win this constitutional right?

The *fiction* that corporations have constitutional rights arose out of a court reporter's false, unofficial comment that the Supreme Court had given corporations the same 14th amendment rights as natural persons in *Santa Clara County v Southern Pacific Railroad*, 118 U.S. 394 (1886). (Comments have no legal validity.) The Court's decision made no such ruling. In fact, the Court explicitly ruled that it would not decide the constitutional question because the case could be (and was) decided on other grounds.¹⁵

The 14th Amendment does not mention corporations or give them the constitutional rights of persons. Section 1 of this amendment states that no state can "deprive any person of life, liberty, or property." Cases that create or follow corporate constitutional rights ignore these facts. The Supreme Court has never explained or justified why an artificial person like a corporation should have the same constitutional rights as natural persons. Every case granting corporate constitutional rights based on *Santa Clara* rests upon an unsupported falsehood -- an invention by the combined actions of one court reporter and later by Supreme Court decisions.

What the ruling became

Santa Clara became a "precedent" or cover for MInnesota & St. Louis Ry. Co. v. Beckwith (129 U.S. 26, 1889) and all other subsequent Supreme Court decisions explicitly concluding that corporations possessed equal protection and/or due process constitutional rights -- rights

¹⁵ For more information, see Thom Hartmann, *Unequal Protection: How Corporations Became "People"* and How You Can Fight Back, 2d ed., 2010, pp. 14-48.

which were originally intended for freed slaves. Perhaps the Supreme Court justices who used the *Santa Clara* case as "precedent" thought or hoped that nobody would dig up the real history of the origins of corporate constitutional rights. The *Santa Clara* decision was a corporate coup d'etat.

Notable cases where this constitutional right was hijacked by corporations:

Lochner v. New York (198 U.S. 45, 1905). The Court overturned a maximum 60-hour work week law for employees of the state's dangerous bakery industry, citing interference with the due process freedom of contract right of employers and employees to set their own contract terms. The decision sparked similar decisions which resulted together in the invalidation of several hundred federal and state corporate- related laws and regulations protecting workers (including children), consumers and communities.

Louis K. Liggett Co. v. Lee (288 U.S. 517, 1933)

The people of Florida passed a law that levied higher taxes on chain stores than on locally-owned stores. The Supreme Court overturned the law citing the due process and equal protection clause of the 14th Amendment and the Interstate Commerce clause.

"Of the 150 cases involving the Fourteenth Amendment heard by the Supreme Court up to the *Plessy v. Ferguson* case in 1896 that established the legal standing of "separate but equal," 15 involved blacks and 135 involved business entities." ¹⁶

Members of the Supreme Court disagreed with granting corporations 14th Amendment rights Justice Douglas stated in his dissenting opinion in *Wheeling Steel Corp. v. Glander:*

"I can only conclude that the Santa Clara case was wrong and should be overruled...
There was no history, logic or reason given to support that view nor was the result so obvious that exposition was unnecessary...If they [the people] want corporations to be treated as humans are treated, if they want to grant corporations this large degree of emancipation from state regulation, they should say so. The Constitution provides a method by which they may do so. We should not do it for them through the guise of interpretation."

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How corporate hijacking of this amendment harms you, your family, communities and the environment

Corporations have wielded the 14th Amendment as a shield to evade democratic control to protect the health, safety and welfare of people and communities. Corporations have successfully sued or threatened lawsuits as a deterrent against communities favoring local businesses over chain stores, opposing the siting of cell phone towers, and other corporate actions on the basis of "discrimination" or "due process" rights violations under the 14th Amendment. This amounts to "discrimination" in favor of corporate rights over human and

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¹⁶ The Hijacking of the Fourteenth Amendment, by Doug Hammerstrom, http://reclaimdemocracy.org/wordpress/wp-content/uploads/2012/07/fourteenth_amendment_hammerstrom.pdf

¹⁷ 337 U.S. 562, 580-81

community rights. It also profoundly inhibits the basic right to decide by people to safeguard their own health, safety and well being.

Take Action

Lack of an authentic democracy is due not only to corporate campaign donations (or investments) or domination of the media. We'll never have an authentic democracy so long as corporations possess any inalienable constitutional rights, including the 14th Amendment's due process and equal protection rights. That's why MTA educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

Corporate Hijacking of the Contract Clause

What is the Contracts Clause of the U.S. Constitution? (Article I, Section 8, Clause 3)

"No State shall...pass any...Law impairing the Obligation of Contracts." States are not to interfere with private contracts -- originally between individuals or between the state and individuals.

When did corporations first win or hijack this constitutional right or provision?

1819 - Dartmouth College v. Woodward, 17 U.S. (4 Wheat)

In 1769, the King of England granted a charter to Dartmouth College -- one of several private colonial colleges, including Harvard and Yale, established by the King to sustain the monarchy and class structure of the British Empire. After the Revolution, a core requirement of the new U.S. republican form of government was an educated populace. This required teachings of educational institutions to be determined through a public process, not a private one. New Hampshire's Governor introduced a law to amend the charter to convert private Dartmouth College to Dartmouth University and called on the school to set up public colleges around the state. The College claimed that the enacted law violated its original charter with the state and filed suit. The New Hampshire Supreme Court ruled that the legislature had the authority to change the college's charter, "...because it is a matter of too great moment, too intimately connected with the public welfare and prosperity, to be thus entrusted in the hands of a few. The education of the rising generation is a matter of the highest public concern, and is worthy of the best attention of every legislature." The College appealed to the U.S. Supreme Court, which upheld the legitimacy of the original contract between the College and King of England based on the Contract Clause.

Notable cases where this constitutional right or provision was hijacked by corporations:

1819 - Dartmouth College v. Woodward, 17 U.S. (4 Wheat)

Business corporations gained greater powers when the Contract Clause was expanded to apply from individuals to corporations. The decision established that a corporation was a party in a private contract rather than a creation of public law. Even though the state originally possessed supreme or ultimate power (i.e. "sovereign" power) over a corporation when it issued a charter, the states no longer possessed ultimate sovereignty over their corporation. By merely being a party to the contract with the corporation, the state is unable to exercise authority beyond those privileges, protections and abilities defined by the state in the original corporate charter.

How corporate hijacking of this amendment or provision harms you, your family, communities and the environment

Government-granted charters or licenses to one or more individuals to form a corporation was a powerful tool used by the state to ensure that corporate actions promoted the health, safety and welfare of individuals regulated corporate entities to. Defining a corporate charter as a contract weakened the ability of our republican form of government to use corporate charters as democratic tools to protect people. Corporations weren't intended by our nation's founders to be co-equals with states, but rather subordinate to governments.

Corporate charters were originally granted by legislatures one at a time for a limited number of years. Charters detailed what corporations could and could not do in producing goods or services. The goal was to ensure public accountability. Charters provided to shareholders and owners certain privileges and powers to conduct their business as well as protections, most notably limited legal and financial liability if the corporation was sued. Charters were routinely revoked or taken away and corporations dissolved by the state if these legal creations of the state acting beyond the terms of their original charters. This was an affirmation that *We the People* were in charge of our government, having ultimate authority over our creations, not subordinate or even an "equal party." Charters are tools to protect our republican form of government and protect *We the People* from harms caused by corporate abuses or from corporate actions seeking to assert governing power (e.g. many states stipulated that corporations were prohibited from donating to political campaigns or candidates).

Defining a corporate charter as a contract flipped the constitutional script. *Dartmouth* set the precedent of

the Supreme Court granting corporations numerous constitutional and rights originally intended exclusively for natural persons. Corporate constitutional rights have not only diminished the ability to assert democratic authority over corporations using corporate charters, they've also trumped the ability of elected representatives to enact laws, regulations or executive decisions to protect the health, safety and welfare of residents, individuals, workers, and communities; as well as to protect the natural world. The Contract Clause made it more difficult to amend or revoke corporate charters or even to impose certain taxes on corporations.

Prominent opposition to the corporate hijacking of the Commerce Clause

Ohio Supreme Court Chief Justice Thomas Bartley in *Bank of Toledo vs. Toledo and Bond* (1 O.S. 622, 1853) stated:

"[T]he whole doctrine that the charter of a private corporation is a contract, is founded on a fiction, at variance with the truth or real fact existing. An ordinary act of incorporation contains nothing more than the usual stipulations and provisions to be found in laws generally. Persons asking for the passage of a law incorporating a company, do not in fact think of such a thing as a negotiation for entering into a contract with the State...In every point of view, therefore, the idea that the charter of a corporation is a contract, whereby this legislative power of regulation and repeal is bargained away, or disposed of by contract, is a legal fiction in opposition to the truth of the fact, and the obvious intention of the persons interested."

Take Action

Lack of democracy is due not only to corporate campaign donations (or investments) or domination of the media. We'll never have an authentic democracy so long as corporations possess any inalienable constitutional rights, including corporate hijacking of the Contract Clause by the Supreme Court. That's why Move to Amend educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

Corporate Hijacking of the Commerce Clause

What is the Commerce Clause of the U.S. Constitution? (Article I, Section 8, Clause 3)

The Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

When did corporations first win or hijack this constitutional right or provision?

1875 - Welton v. State of Missouri, 91 U.S. 275

An agent for the I.M. Singer Company sold a machine in Missouri without a license. The state imposed licenses, taxes, and other legal devices as protections against fraudulent and dangerous products and against harms to the local economy. The corporation wanted to set up its own sales system, so it sued the state. The state defended its sovereign right to establish its own laws to protect its residents, including its local merchants. The U.S. Supreme Court ruled that the state law was an unconstitutional burden on commerce under the Commerce Clause.

Notable cases where this constitutional right or provision was hijacked by corporations: 1898 - Schollenberger v. Pennsylvania, 171 U.S. 1

Pennsylvania was one of several states that passed a law prohibiting the sale or manufacturing of oleomargarine, which at the time was often made from slaughterhouse by-products containing dangerous ingredients, but was manufactured to look like butter. After the Pennsylvania Supreme Court upheld the state's ban, the Oleomargarine corporations sued. During this time, the federal government passed a law defining butter and oleomargarine and taxed the latter. The U.S. Supreme Court ruled in favor of Pennsylvania's legislative right to pass necessary and appropriate laws to protect the health, safety and welfare (called "police power" rights) of its citizens. The corporations didn't give up. Ten years later, the Oleo corporations sued again. This time, the Supreme Court ruled in favor of the corporations. Corporate attorneys trumped the state's claimed right to pass laws protecting public health by asserting the law was an "illegal trade barrier" based on the Commerce Clause's provision allowing interstate commerce. Oleomargarine was an item of "commerce" traded between the states. Interstate commerce could be regulated (i.e. taxed -- at that time a tax was a form of regulation), but couldn't be prohibited by states.

1967 - Short v. Ness Produce Co., 385 U.S. 537

An Oregon law required meat produced from out of the country to have a label in the interests of protecting the health of its residents. The Supreme Court declared the law unconstitutional on Commerce Clause grounds.

1982 - Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941

Nebraska passed a stringent law on the sale and transfer of its ground water outside of the state. The Supreme Court ruled that the water was an article of commerce and, therefore, the law was invalid under the Commerce Clause.

1990 - National Solid Wastes Management Assn. v. Alabama Dept of Envir., 910 Fed. 2d 713 In an effort to avoid becoming the waste dump of the nation, Alabama passed a law banning out-of state hazardous waste unless certain requirements were met. A federal court decided that the law was unconstitutional under the Commerce Clause. Hazardous waste was "commerce." The Supreme Court chose not to hear the case, which meant the lower court decision in support of corporate interests stood.

How corporate hijacking of this amendment or provision harms you, your family, communities and the environment

The Supreme Court has consistently preempted the role of states and Congress from making public policy to serve the interests and protect the rights and health, safety, welfare and morals of municipalities, states, residents, workers, consumers and the environment. Judicial decisions have locked in corporate rights by hijacking the Commerce Clause. For example, by labeling the manufacturing and sale of dangerous products and importation of toxic waste as "commerce," the Court has prevented the right to a republican form of self-government that serves the interest of people, communities and the environment.

Time and again the following sequence has played out: $\sqrt{\ }$ A local community or state democratically passes a law to protect the health, safety, welfare and morals of people, community and/or the environment. $\sqrt{\ }$ One or more corporations and/or corporate trade group challenges the law in court. $\sqrt{\ }$ Corporate agents testify that the law claiming to protect the health, safety, welfare and morals is a "trade barrier" that places an "excessive burden on interstate commerce" and is thus unconstitutional. $\sqrt{\ }$ The Court agrees. $\sqrt{\ }$ The law is overturned. $\sqrt{\ }$ Corporations gain greater political and economic power. $\sqrt{\ }$ The ability of the public and their democratically-elected representatives to protect their health, safety and welfare is diminished.

Prominent opposition to the corporate hijacking of the Commerce Clause

"Supreme Court Justices used trade barrier language based on the Constitution's Commerce Clause to promote the corporate agenda by invalidating state and local laws that threatened corporate power." ¹⁸

Take Action

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¹⁸ Jane Anne Morris, corporate anthropologist, author of *Gaveling Down the Rabble*

Lack of an authentic democracy is due not only to corporate campaign donations (or investments) or domination of the media. We'll never have an authentic democracy so long as corporations possess any inalienable constitutional rights, including corporate hijacking of the Commerce Clause by the Supreme Court. The Supreme Court's hijacking of the Commerce Clause to overrule Congress and state legislatures to benefit corporations has created the domestic equivalent of international "free trade" -- a domestic anti-democratic free trade zone. That's why Move to Amend educates and organizes to abolish ALL corporate constitutional rights and hijacks. Inalienable rights are for human beings, not artificial legal creations of government.

Appendix

The We The People Amendment (HJR 48) and Unintended Consequences

Every reform effort or legislation can be questioned by raising the specter of "unintended consequences." But House Joint Resolution 48 only eliminates corporate constitutional rights (CCRs) that *We The People* never granted to corporations. Below are some of the alleged unintended consequences of the We The People Amendment and Move to Amend's responses.

- 1. Eliminating CCRs would cause huge financial disruption of the American economy. Corporations did not have or need CCRs to become the most powerful and dominant economic institutions in the 1800's. Their size and influence have only grown since then. If eliminating CCRs caused any economic angst, Congress and/or the States can enact appropriate legislation to address specific problems. Financial disruption does not appear to be an issue.
- **2. Eliminating CCRs would subject corporations to government overreach.**Per state statute, corporations already have the right to sue in a court of law to protect their interests. Existing federal and state statutes already protect corporations from unlawful searches and seizures, e.g., California Penal Code, Title 12, Chapter 3 (search warrants); United States Code, Title 18, Chapters 109, 205 (searches and seizures). Under HJR 48 corporate shareholders, officers, and employees, as well as association members, all retain their rights as individuals, so no legitimate rights will be lost.
- 3. Eliminating CCRs would result in corporations being forced to disclose proprietary information.

Trade secrets are protected by both federal and state laws. The federal Defend Trade Secrets Act and Uniform Trade Secrets Act, which most states have passed. The former provides protections of financial, business, scientific, technical, economic, and engineering related trade secrets if the owner has taken basic measures to keep such information secret.

4. Eliminating CCRs would jeopardize non-profit corporations and associations.

Each of the rights the Supreme Court has created for corporations (Equal Protection & Due Process [14th Amend.], No surprise inspections/searches [4th Amend.], Due Process and compensation for government takings [5th Amend.] Political and commercial speech & "right not to speak [1st Amend.], Jury trial in criminal case [6th Amend.], Freedom from double jeopardy [5th Amend.], and Jury trial in civil case [7th Amend.] could be conferred statutorily on for-profit or non-profit corporations by Congress or the States.

5. Eliminating CCRs would make non-profits such as Planned Parenthood subject to unreasonable searches and seizures.

Even absent statutory protections the U.S. Supreme Court has already recognized the right of corporations to represent their members' constitutional rights under appropriate circumstances. In *NAACP v. Alabama*, 357 U.S. 449 (1958) the Alabama attorney general obtained an injunction against the Alabama branch of the NAACP for violating that state's incorporation laws and sought information including the names and addresses of its members. The NAACP complied with the AG's demands except for providing the membership information. This occurred at the height of the Civil Rights movement.

The Supreme Court found the NAACP as a non-profit corporation did not itself have the right to object to the AG's demand, but it had the right to assert its members' rights where they could not assert their rights themselves without giving up those same rights (i.e., identify themselves). See pp. 458-459. So even under this worst case scenario a non-profit would not need CCRs, but could assert its members' rights to protect them and their rights.

See Why Non-Profit Corporations Do Not Have, Deserve or Need Constitutional Rights (https://movetoamend.org/why-non-profits-do-not-have-deserve-or-need-constitutional-rights) for more information.

Contrast the preceding hypothetical and unfounded consequences with just a few of the known and highly detrimental consequences of CCRs:

Corporate political spending is 1st Amendment "political speech."
 The result: The 2008 Great Recession nearly brought down the U.S. economy, caused in part by corporate political campaign contributions. Shielded as First Amendment-protected "free speech," that corporate lobbying resulted in repeal of many market protections such as the Glass-Steagall Act. Corporate profits greatly increased but many people lost their homes and retirement savings. Buckley v. Valeo (1976).

• Corporations have a 1st Amendment right not to speak.

The result: A federal Court prevented the National Labor Relations Board from ordering businesses to post a rule at the workplace, thus making it more difficult to inform workers of their rights while employers can post anything as long as it does not contain a threat or promise of benefit. *National Assoc'n of Manufacturers v. NLRB* (2013).

• Corporations have 4th Amendment protections.

The result: Governmental attempts to protect the public from a plethora of dangers stemming from private commercial activities (e.g., food contamination, drug impurities, automobile and airplane defects, dangerous conditions, worker safety violations, and

environmental hazards) are thwarted by eliminating surprise inspections. *Marshall v. Barlow's*, *Inc.* (1978).

• Corporations have 5th Amendment protections.

The result: Certain regulations enacted by a State against corporations are "regulatory takings" and illegal without just compensation -- not instances of legitimate examples of using its police power to protect public health, safety and welfare. *Pennsylvania Coal Co. v. Mahon* (1922).

Corporations have a legal mandate to maximize profit for shareholders. It is our elected official's responsibility to protect the economy, the environment and the public. Public welfare requires us to reign in unchecked corporations that have hijacked the Constitution and our legal system which has made it impossible to hold them legally responsible without an amendment to the Constitution to make clear that their proper place is accountable to the government and the people.

Move to Amend believes the real danger that desperately requires redress are the actual, known consequences of CCRs wrought by large and wealthy corporations. In fact, we have a bigger problem if we do not act to curtail corporate power.

As Supreme Court Justice Louis Brandeis wrote: "We must make our choice. We may have democracy, or we may have wealth concentrated in the hands of the few, but we can't have both."

Side-by-Side Comparison: Move to Amend's We The People Amendment, (HJR 48) and the Democracy for All Amendment (HJR 2)

The comparisons contain all the language of each proposed amendment. Underlining does not appear in the originals but has been added for emphasis. Italics indicate differences between the two proposed amendments.

| MTA's We The People Amendment |
|--------------------------------------|
| HJR 48 Lead: Rep. Jayapal (Dem., WA) |
| Introduced 2/22/2019 |

Democracy for All Amendment HJR 2. Lead: Rep. Deutch (Dem. FL) Introduced 1/3/2019

Section 1

"The rights protected by the Constitution of the United States are the rights of <u>natural</u> <u>persons</u> only."

No equivalent provision.

"Artificial entities established by the laws of any State, the United States, or any foreign state shall have <u>no rights</u> under this Constitution and are subject to <u>regulation</u> by the People, through Federal, State, or local law."

No equivalent provision.

Corporations and other artificial entities would retain all their existing constitutional rights and others if granted by the Supreme Court.

"The <u>privileges</u> of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be <u>inherent or inalienable</u>."

No equivalent provision.

Corporate "rights" would continue to preempt local, state and federal laws and regulations passed by legislators or enacted by citizen initiatives.

Section 2

(Statement of Intent:) "... to ensure that all citizens, regardless of their economic status,

Section 1

(Statement of Intent:) "To advance democratic self-government and political

have access to the political process, and that no person gains, as a result of their money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure."

"Federal, State, and local government <u>shall</u> regulate, limit, or prohibit contributions and expenditures, including <u>a candidate's own</u> <u>contributions and expenditures</u>..."

equality, and to protect the integrity of government and the electoral process..."

- This wording does not "ensure that all citizens, regardless of their economic status, have access to the political process.
- This wording does not prohibit a person from gaining, "as a result of their money, substantially more access or ability to influence in any way" elections for candidates for public office or any ballot measure.
- This does not include ballot measures.

Section 1

- "...Congress and the States <u>may</u> regulate and set <u>reasonable</u> limits on the raising and spending of money by candidates and others to influence elections."
- This language is not mandatory. "Shall" is mandatory. "May" is optional.
- It would allow the courts to decide what is "reasonable," giving courts even greater power.
- This language does not expressly give local government the power to "regulate, limit, or prohibit... <u>a candidate's own</u> contributions and expenditures."

Section 2:

"Congress and the States shall have the power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections."

- Congress and the States are not required to implement and enforce the amendment.
- Congress and the States are not required to distinguish between natural persons and corporations and other artificial entities.

"Federal, State, and local government <u>shall</u> <u>require</u> that any permissible contributions and expenditures be <u>publicly disclosed</u>.

The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment."

Section 3

"Nothing in this amendment shall be construed to abridge freedom of the press."

• Local government is not empowered to implement and enforce the amendment if the Federal and State government fail to do so.

No equivalent provision. "Dark Money" (political spending by organization that don't have to disclose their donors) will continue to flow to unknown candidates and ballot measures.

No equivalent provision. The Supreme Court would be free to re-define "speech" to further serve the interests of corporate entities.

Section 3

Includes equivalent wording.

Side-by-Side Comparison: Move to Amend's *We The People Amendment*, (HJR 48) and HJR 57, Rep. Adam Schiff's Amendment

The comparisons contain all the language of each proposed amendment. Underlining does not appear in the originals but has been added for emphasis. Italics indicate differences between the two proposed amendments.

HJR 57. Lead: Rep. Schiff (Dem. CA)

MTA's We The People Amendment

"The rights protected by the Constitution of

the United States are the rights of natural

Section 1

persons only."

| HJR 48 Lead: Rep. Jayapal (Dem., WA) Introduced 2/22/2019 | Introduced 5/8/2019 |
|--|---|
| | Section 1 |
| | "Nothing in this Constitution shall be |
| | construed to forbid Congress or the States |
| | from imposing reasonable content-neutral |
| | limitations on private campaign contributions |
| | or independent election expenditures, or |
| | from enacting systems of public campaign |
| | financing, including those designed to restrict |
| | the influence of private wealth by offsetting |
| | campaign spending or independent |
| | expenditures with increased public funding." |
| | This language is not mandatory. |
| | It would allow the courts to decide what is |
| | "reasonable," giving courts even greater |
| | power. |

No equivalent provision.

No equivalent provision.

"Artificial entities established by the laws of any State, the United States, or any foreign state shall have <u>no rights</u> under this Constitution and are subject to <u>regulation</u> by the People, through Federal, State, or local law."

Corporations and other artificial entities would retain all their existing constitutional rights and others if granted by the Supreme Court.

"The <u>privileges</u> of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable."

No equivalent provision.

Corporate "rights" would continue to preempt local, state and federal laws and regulations passed by legislators or enacted

Section 2

(Statement of Intent:) "... to ensure that all citizens, regardless of their economic status, have access to the political process, and that no person gains, as a result of their money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure."

No equivalent provision.

by citizen initiatives.

• This amendment provides no direction as to the intention or basis for the amendment when interpretation is required by the Judicial branch.

"Federal, State, and local government <u>shall</u> regulate, limit, or prohibit contributions and expenditures, including <u>a candidate's own</u> contributions and expenditures..."

No equivalent provision.

• This amendment does not provide any directive or requirement for government at any level -- federal, state or local -- to regulate campaign spending.

"Federal, State, and local government <u>shall</u> <u>require</u> that any permissible contributions and expenditures be publicly disclosed.

No equivalent provision.

• This amendment does not require the disclosure of campaign contributions or expenditures.

"The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment." No equivalent provision.

Section 3

"Nothing in this amendment shall be construed to abridge freedom of the press."

No equivalent provision.

Comparing the For the People Act (HR1) to the We the People Amendment (HJR 48)

<u>Do We Need a Constitutional Amendment Despite HR 1?</u>

Concerned citizens frequently ask Move To Amend members "why do we need an amendment to our Constitution now that the House of Representatives has passed HR 1, the "For the People Act?" Here's why:

What is HR 1?

HR 1 is legislation that, if enacted, would significantly reform our political system. It would (incomplete list--the bill is lengthy):

- --Expand voter registration and voting access making internet, same-day, and automatic voter registration available, limiting removal of voters from voter rolls, and requiring paper ballots
- --Establish independent, non-partisan redistricting commissions
- --Enhance election security by protecting voter rolls and improving cybersecurity
- --Regulate campaign spending by expanding the ban on foreigners contributing to our elections and increasing disclosure of campaign contributions
- --Create an alternative campaign funding system for some federal offices involving

What is HJR 48?

HJR 48, the "We The People" Amendment drafted by Move To Amend, is a proposed amendment to the US Constitution. It would:

- --Establish that the rights protected by the Constitution of the United States are the rights of natural persons only. Artificial entities such as corporations have no constitutional rights and are subject to regulation by Federal, State, or local law. The privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.
- --Federal, State and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, to ensure that all citizens have access to the political process, and that no person gains from personal wealth substantially more access or

federal matching of small contributions

- --Require additional ethics rules to all three branches of government such as a code of ethics for all federal judges and justices, prohibiting House members from serving on the board of a for-profit entity, and additional conflict-of-interest rules for federal employees and the White House
- --Mandates candidates for President and Vice-President to submit 10 years of tax returns.

How Are HR 1 and HJR 48 Alike?

- --Both measures seek to fundamentally reform our election and campaign finance systems.
- --Both require approval of Congress.

ability to influence in any way the election of any candidate for public office or any ballot measure. Campaign contributions and expenditures shall be disclosed. The courts shall not interpret the spending of money to be constitutionally protected speech.

--Nothing in this amendment shall be interpreted to abridge freedom of the press.

How Are They Dissimilar?

- --HR 1 is <u>legislation</u>. To become law requires majority approval by Congress and the President's approval, or--if vetoed by the President--two-thirds approval by Congress.
- --HJR 48 is a proposed <u>constitutional</u> <u>amendment</u>. To be adopted requires two-thirds approval by Congress and ratification by three-quarters of the states, or, if two-thirds of the states call for a constitutional convention that proposes an amendment, then ratification by three-quarters of the states.
- -- The Courts could invalidate HR 1, in whole or in part. The Courts could not invalidate an amendment because the Constitution supersedes laws passed by Congress.
- --HR 1 does not fully address the issues of Big Money and Corporate Power/corporate rights in our democracy. HJR 48 clearly says corporations and other artificial entities do not have the same rights as people and that money is not constitutionally-protected speech.

Is HR 1 "Better" Than HJR 48?

--No. But it is much more detailed, and covers

Is HJR 48 "Better" Than HR 1?

--In one sense, yes. Only HJR 48 addresses both the rights of corporations and Big

many more specific areas of law. The two measures are complementary.

Money. And only HJR 48 clearly mandates these changes.

--Move to Amend applauds HR 1 for its many necessary reforms. But without a constitutional amendment to eliminate corporate constitutional rights and "money equals speech" all of HR 1's reforms could be overruled by the courts.

Do We Need a Constitutional Amendment Now that the Green New Deal Has Been Introduced?

People often ask this question. The answer is, yes, because the Green New Deal and HJR 48 have different goals and methods.

What is the Green New Deal?

The Green New Deal, House Resolution 109, is a resolution in the House of Representatives. (Summary by the Congressional Research service:)

"This resolution calls for the creation of a Green New Deal with the goals of

- · achieving net-zero greenhouse gas emissions;
- establishing millions of high-wage jobs and ensuring economic security for all;
- · investing in infrastructure and industry;
- · securing clean air and water, climate and community resiliency, healthy food, access to nature, and a sustainable environment for all; and
- · promoting justice and equality.
 The resolution calls for accomplishment of these goals through a 10-year national mobilization effort. The resolution also enumerates the goals and projects of the mobilization effort, including
- building smart power grids (i.e., power grids that enable customers to reduce their power use during peak demand periods);
- upgrading all existing buildings and constructing new buildings to achieve

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- --Federal, State and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, to ensure that all citizens have access to the political process, and that no person gains from personal wealth substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure. Campaign contributions and expenditures shall be disclosed. The courts

maximum energy and water efficiency;

- removing pollution and greenhouse gas emissions from the transportation and agricultural sectors;
- · cleaning up existing hazardous waste and abandoned sites;
- ensuring businesspersons are free from unfair competition; and
- providing higher education, high-quality health care, and affordable, safe, and adequate housing to all."

How Are the GND and HJR 48 Alike?

--Both measures seek to fundamentally reform our political and economic systems and both require approval of Congress.

shall not interpret the spending of money to be constitutionally protected speech.

--Nothing in this amendment shall be interpreted to abridge freedom of the press.

How Are They Dissimilar?

- --The GND is not legislation ready for a vote, but a resolution. It is aspirational, a proposal, a policy statement. Even if the GND were passed in its present form, it is not legislation and would not become law. HJR 48 is a completely drafted amendment ready to be acted upon.
- --The GND goes far beyond the scope of HJR 48. HJR 48 eliminates court-created legal rules giving constitutional rights to corporations and other artificial entities, as well as the "money is speech" doctrine. The GND seeks to prevent climate catastrophe and other crises by a massive, 10-year mobilization. See summary on reverse side.
- -- The Courts could invalidate the GND in whole or in part. The Courts could not invalidate an amendment because the Constitution supersedes laws passed by Congress.
- --The GND does not address the issues of Big Money and Corporate Power in our democracy by name. HJR 48 clearly says corporations and other artificial entities do not have the same rights as people and that money is not constitutionally protected speech.

Do the GND and HJR 48 Conflict?

Is Either One Superior to the Other?

--No. But the GND is much more detailed, and covers many more specific areas of reform. The two measures are complementary.

--In one sense, yes, HJR 48 is superior.
Move To Amend applauds the sponsors of the GND for advocating its many important reforms. But without a constitutional amendment to eliminate corporate constitutional rights and "money equals speech" all of the GND's reforms could be overruled by the courts or overwhelmed by Big Money.

Move to Amend

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End Corporate Rule. Legalize Democracy. Move to Amend! https://movetoamend.org/