
Corporate Hijacking of the U.S. Constitution

Move to Amend recently issued a series of written documents detailing the many constitutional rights awarded to corporations by the Supreme Court. The series, *Corporate Hijacking of the U.S. Constitution*, includes a four-page summary of several corporate constitutional rights. It's followed by seven separate two-page documents describing the "corporate hijacking" of individual constitutional amendments and portions of the original U.S. Constitution.

What follows is an abridged version of each of the seven documents.

As stated in the introduction to the series:

Many believe corporate hijacking of the constitution begins and ends with money in elections (i.e. First Amendment 'free speech' rights permitting corporations to spend money to influence elections). But the threat to people, communities, the environment and democracy itself is much greater and includes additional parts of the First Amendment, as well as other amendments of our constitution.

...Ending corporate constitutional rights is more than simply reversing the 2010 Citizens United vs FEC Supreme Court decision and more than simply ending political money defined as First Amendment-protected 'free speech.'

The entire series is at <https://movetoamend.org/toolkit/corporate-hijacking-us-constitution>

Understanding the totality of corporate constitutional rights (better known as "corporate personhood") is critical. Corporations did not originally possess constitutional rights in this country.

Several legislative and amendment alternatives to Move to Amend's *We the People Amendment*, HJR48 (<https://movetoamend.org/amendment>) reference corporate constitutional rights, but *only* focus on the Citizens United Supreme Court decision or *only* address corporate political money in elections. These alternatives provide a gaping hole for the power elite by simply using their remaining constitutional rights to assert control over people and communities and to further plunder the planet -- as they once did prior to winning corporate political free speech rights.

Reversing *Citizens United* isn't enough. Simply ending corporate political free speech rights isn't enough. We must abolish all forms of corporate personhood if we expect as self-governing people to assert our authority and to protect ourselves, families, communities and what remains of a livable world...not to mention creating a political system for the very first time where *We the People* include All the People.

-Greg Coleridge. Member of the POCLAD Collective and Move to Amend Outreach Director

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.

First Amendment - political free speech

When did corporations first win this constitutional right?

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

The Supreme Court anointed 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.

What about Citizens United?

It’s widely believed that the *Citizens United vs. FEC* (558 U.S. 310) 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. The *Citizens United* decision, however, certainly expanded the power of corporations to spend money in elections.

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.

First Amendment - excluding political free speech

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.

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.

Fourth Amendment – search and seizure

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

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

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 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.

Fifth Amendment – no taking of property without public purpose and just compensation

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

One of original Bill of Rights (first 10 Amendments), which intended to safeguard individual human liberties from government power. The 5th Amendment’s many provisions include that no person shall be “subject for the same offence to be twice put in jeopardy of life or limb. . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

An especially notable case

where this constitutional right was hijacked by corporations:

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.”

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.

14th Amendment - Equal Protection and Due Process

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.

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.” 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.

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

Contracts Clause of the Constitution – no law shall impair contracts

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.

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.

Commerce Clause of the Constitution – Congress has power to regulate commerce

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

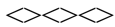
1898 - *Schollenberger v. Pennsylvania*, 171 U.S. 1
Pennsylvania was one of several states that passed a law prohibiting the sale or manufacturing of oleomargarine, which at the time was often made from slaughterhouse by-products containing dangerous ingredients, but was manufactured to look like butter. 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.

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: √ A local community or state democratically passes a law to protect health, safety, welfare and morals of people, community and/or the environment. √ One or more corporations and/or corporate trade group challenges the law in court. √ 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. √ The Court agrees. √ The law is overturned. √ Corporations gain greater political and economic power. √ The ability of the public and their democratically-elected representatives to protect their health, safety and welfare is diminished.



Each document ends with a *Take Action* section that reads in part:

“We’ll never have an authentic democracy so long as corporations possess any inalienable constitutional 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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By What Authority (ISSN: 524-1106) is published by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation and plunder the earth. **By What Authority** reflects an unabashed assertion of the right of the sovereign people to govern themselves.

POCLAD is a group of 7 people instigating democratic conversations and actions that contest the authority of corporations to govern. Our analysis evolves through historical and legal research, writing, public speaking and working with organizations to develop new strategies that assert people’s rights over property interests.

BWA is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions and suggestions.

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