

 **END CORPORATE RULE. LEGALIZE DEMOCRACY.**

# MOVE TO AMEND

## 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.

### Why this Series?

To educate the public about how corporate constitutional rights cause harm and usurp the constitutional rights of human beings, Move to Amend's Law and Research Committee will present a series of case studies illustrating the harm caused by the Supreme Court's invention of corporate constitutional rights (CCRs). Because *Citizens United* and other money-as-speech (aka money in politics) cases have already received much attention, our focus will be on harmful CCR case law under the 4th, 5th, and 14th Amendments and the Contracts, Commerce, and Supremacy clauses of the Constitution, as well as First Amendment cases not involving money-as-speech.

### 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 never 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. *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. *See v. City of Seattle*, 387 U.S. 541, 545-546 (1967).

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. *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.)

### ***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 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.

### **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" had 66 co-sponsors in the U.S. House of Representatives at the end of the 115th Congress.

***Join the Movement to take back our rights, our democracy, our country. Get involved with Move to Amend by signing the petition at [www.MoveToAmend.org/motion](http://www.MoveToAmend.org/motion).***

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