



*Some Questions and Answers for America's Businesspeople
About the People's Rights Amendment*

The People's Rights Amendment overturns the 2010 *Citizens United v. FEC* ruling, a 5-4 decision of the US Supreme Court that decided that we, the American people, are not allowed to limit corporate spending in elections. The Court ruled that corporations—even transnationals—can spend unlimited amounts to help elect or defeat candidates for public office. The American people have overturned at least six Supreme Court cases by constitutional amendment in the past, and we need to do the same with *Citizens United*, which makes corporate money the same as “speech.”

Most businesspeople, like other Americans, do not believe corporations are people, or that spending corporate capital in elections is constitutionally protected speech. Businesses are designed to provide a product or service, to employ people, and to build a strong economy. Many businesspeople exercise their rights to engage in the policy-making process, a right that should never be impeded, but allowing corporations to buy political influence undermines the political rights of all citizens, as well as competitive markets.

The People's Rights Amendment ends the misuse and abuse of people's constitutional rights by multinational corporations to subvert democratically enacted laws and to gain advantage over competitors. The amendment makes clear that corporations are not people with constitutional rights and ensures that people, not corporations, govern in America.

What will be the impact of the People's Rights Amendment on day-to-day business operations? Do corporations have to be “persons” in order to function in our economy?

The People's Rights Amendment will have no impact on day-to-day or other operations of corporations. No activity of a business corporation requires the fabrication of corporate constitutional rights. The rights of individual people (doing business in a corporation or otherwise) are unchanged by the People's Rights Amendment.

For centuries, corporations were able to carry out their business purposes without the fabrication of constitutional rights, and until 1978 “corporate speech rights” did not exist. Until the *Citizens United* ruling in 2010, we were free to use federal law to control corporate spending in elections, and did so for more than a century.

The People's Rights Amendment restores core democratic rights to citizens without changing the productive role of corporations in our economy. State and federal laws define corporations and set the rules for the use of the corporate form. These laws are unaffected by the People's Rights Amendment.

Under state and federal law, corporations are "persons" for the purposes of contracting, suing, being sued, transacting business, and continuity of operations as people come and go. Under state and federal law, corporations are "persons" for numerous purposes, from trademark protection to criminal prosecution. The People's Rights Amendment has no effect whatsoever on those state and federal laws.

The People's Rights Amendment stops the radical and improper application of the "corporate person" concept to the rights of real people under the Constitution.

The People's Rights Amendment would not impact the day-to-day business of corporations, but would prevent misuse of our Constitution by corporations seeking to trump our laws. For example, Monsanto has used its corporate "speech rights" to strike down disclosure laws and conceal its use of genetically modified drugs in food production. This would not be allowed after the People's Rights Amendment. The People's Rights Amendment would prevent corporations from claiming the constitutional rights of persons to strike down laws enacted by "we the people" through our elected state and federal governments.

Following the passage of the amendment, we expect a more free, fair, and competitive marketplace where small and medium size businesses will be less likely to face a competitive disadvantage due to political favoritism.

What effect will the People's Rights Amendment have on our ability to use corporate entities in our business dealings?

None. The People's Rights Amendment does not limit in any fashion the many ways in which people and the states can design and use corporate or other economic legal entities.

The People's Rights Amendment simply states a fundamental truth: whatever corporate entities the state or federal governments create do not have constitutional rights. Instead, their rights and obligations are set out in state and/or federal corporate and other laws.

The corporate form has huge advantages, and we support state policies that encourage easy incorporation. We just should not confuse those policy advantages with constitutional rights.

Does that mean people will lose their rights when they do business in the corporate form?

No. The People's Rights Amendment protects all rights of all people, whether or not they own, run, work for, or buy from corporations.

Whether the rights at issue are speech, due process, or any other human right, the people involved in a corporation—the CEO and executives, employees, shareholders, or other people in a corporation—retain all of their rights as people.

The People’s Rights Amendment simply means that we will not allow courts to pretend that corporations are people when it comes to the Constitution.

What about property rights? Will this change shareholder rights? Rights to due process?

The People’s Rights Amendment protects all constitutional rights of people, whether it is property rights or other rights.

Take an egregious hypothetical example, just to illustrate: Say the government decides it needs computer technology for some reason, and enacts a law requiring that Apple deliver all of its intellectual property to the United States government. Apple sues to block the law, claiming that the government is taking private property without due process in violation of the 5th Amendment (or the 14th Amendment, if a state government tries this). Does Apple have a constitutional right not to have its property taken without due process?

The Due Process Clause says that “no person” can be deprived of life, liberty, or property without due process. Apple is not a “person” under the Due Process Clause, but there are plenty of real people involved in this hypothetical who do have due process rights not to have the value of their Apple shares rendered worthless by government seizure without due process. Nothing about the People’s Rights Amendment would prevent those real people from protecting their rights.

The claim could be brought directly by the corporation using statutes such as the Federal Tort Claims Act. The claim could be brought by the corporation, which may be deemed to have standing to raise the rights of its shareholders. The claim could be brought by the shareholders as a class.

Another possibility to litigate the question may include challenges to the Constitutional power of the federal government to take such action, an approach taken when the Supreme Court invalidated the Truman Administration’s nationalization of the American steel industry in 1952. The People’s Rights Amendment does not empower the government to seize property or do anything in violation of our liberties.

The specific approach for enforcement of corporate property rights would depend on the circumstances and on the jurisprudence developed by the Court after the ratification of the People’s Rights Amendment. On top of all of this, people, businesses, and legislators are extremely unlikely to sit idly by while government seizes property. It is not the unconstitutional concept of corporate rights that blocks such government overreaching, but a healthy Constitution of checks and balances, liberties of the people, and an active, engaged citizenry. The People’s Rights Amendment promotes all of this.

What will be the impact of the Amendment on company political action committees (PACs) and employee contributions?

The People's Rights Amendment will have no impact on laws that apply to political action committee (PAC) contributions and individual contributions made by company employees or others. Instead, the People's Rights Amendment overturns *Citizens United*, and restores to the people and our elected representatives the power and the duty to enact laws and regulations that ensure elections are free, fair, and serve our democracy.

The People's Rights Amendment does not say what those rules should be. Rather, the Amendment says that we the people and our representatives should make those rules.

Congress and the states will be free to decide upon the rules for PACs, employee contributions, or even, for that matter, corporate spending in elections. The People's Rights Amendment clarifies that corporations do not have constitutional "rights" to trump those rules and strike down the election laws that Congress and the states enact.

Will the amendment impact my ability as a business leader to lobby on behalf of my company or with a trade group?

No. The People's Rights Amendment protects all the rights of people to associate and petition government, to speak, and to lobby.

The People's Rights Amendment does not make or change any lobbying rules. It may allow Congress or the states to make such rules, and we believe that reform of our lobbying laws is overdue.

Between 1998 and 2010, the US Chamber of Commerce spent \$739 million on lobbying. Pharmaceutical and health care corporations spent more than \$2 billion on lobbying in the past twelve years. Three corporations seeking military contracts, Northrop Grumman Corporation, Lockheed and Boeing, spent more than \$400 million on lobbying. The list goes on.

The People's Rights Amendment will allow (but not require) Congress and the states to regulate corporate lobbying in an even-handed way. Corporations will not have a "right" to "speak" through election cash from corporate treasury—which many believe is a way of bribing elected officials—or to corrupt our lawmaking. At the same time, the People's Rights Amendment protects the rights of human beings to say anything they want, and to argue, inform, appeal to, and petition our representatives for anything at all, including about laws that affect our own businesses or the industries in which we work.

The People's Rights Amendment merely distinguishes between people and corporations, so our government remains a government of, by, and for the people.

Are there aspects of the corporate rights doctrine not related to campaign finance that will be addressed by the amendment?

Yes. The fabrication of “corporate rights” under the Constitution goes beyond elections and money in politics. *Citizens United* is the extreme extension of a corporate rights doctrine that courts have used with increasing aggression and hostility to the judgment of people and our elected representatives since 1980.

The courts have used the fabrication of corporate rights, particularly corporate “speech,” to strike down a wide range of common-sense laws in recent years, from those concerning clean and fair elections; to environmental protection and energy; to tobacco, alcohol, pharmaceuticals, and health care; to consumer protection, lotteries, and gambling; to race relations, and much more.

Examples include laws to ensure an even playing field between local, regional, or national businesses that compete with multinational corporations, such as laws to protect consumer choice by requiring disclosure about food products derived from genetically modified drug treatments for animals, or laws to protect the public interest, such as limitations on cigarette advertisements near schools, or energy conservation requirements for utility corporations.

A new corporate “due process” theory has turned federal judges into overseers of state juries and courts, so that jury awards may be overturned if federal judges decide they are “too high.”.- These “rights” have been used almost exclusively by multinational corporations to evade accountability for harmful products or actions.

Even if we think punitive damages need oversight and reform, most businesspeople do not want to twist our Constitution to prevent our government of the people from deciding on the best course. Even as shareholders, we do not need a corporate constitutional “right” to strike down decisions of a state jury because a federal judge might have reached a different conclusion. In a case where a punitive damages judgment is a real constitutional issue, it would be because of the danger that such a judgment might, in essence, completely confiscate shareholders’ property. If it ever came to that (it never has), the human beings who are shareholders have due process rights to make any valid constitutional argument about that “confiscation” without the need to fabricate improper corporate constitutional rights.

In a few other instances, courts have treated corporations as people with Constitutional rights, such as under the Fourth Amendment protections against unreasonable search and seizure. The People’s Rights Amendment changes nothing about the rights of human beings, including the rights of employees, executives, and others against search and seizure. There is no such thing as a corporate constitutional right, but that does not relieve the Courts from ensuring that the government does not violate the rights of people who work in or who own corporations, or anyone else.

What about freedom of the press and media — are they not all corporations?

The People's Rights Amendment will not limit freedom of the press in any way whatsoever. The First Amendment protects freedom of speech and freedom of the press, as well as freedom of religion, assembly, and petition. All of these are rights of the people. In addition, the People's Rights Amendment explicitly reaffirms these freedoms.

A ban on corporate general treasury money to run political advertisements is not the same as a ban on editorials or commentary by the press. A free press is critical to freedom and democracy. No speech, press, or other rights of the people are impacted by the People's Rights Amendment.

Will an amendment impact the ability of non-profit associations and unions to give in elections as well? My church/synagogue/mosque/religious center is a corporation: how will the amendment affect that? What about non-profit corporations? Will this silence them?

The People's Rights Amendment will have no impact on people's rights to freedom of association or freedom of religion. Freedoms such as religion, speech, or assembly are not predicated on the creation by the state of corporate entities with tax-deductions and other state-based advantages.

The federal law (the Bipartisan Campaign Reform Act of 2002) struck down by *Citizens United* equally applied to unions, non-profits, and for-profit corporations.

If union activity, charitable activity, or advocacy activity is done by a corporate entity, the corporation is expected to comply with laws applicable to corporations.

Whatever corporate form and rules government comes up with must be even-handed and apply equally to all religions and all points of view. Government cannot say Protestants but not Unitarians can organize their church under a non-profit corporation law. Government cannot say a synagogue but not a church can get tax-deductible contributions to its non-profit corporate entity because it would violate the Establishment Clause. That has nothing to do with whether those people use a corporation to organize the institution.

There is no reason to be afraid of a fair rule for all that says anyone who wants to organize their church using a corporate form can do so, but they must comply with corporate (and other laws). That has always been the way it has worked and the People's Rights Amendment does not change that.

What about freedom to associate? Corporations are just like any other association.

A corporation is not just like any other association of people. A corporation is a specific creation of state or federal statute that may only be used for purposes defined by the statute that permitted the creation of the corporation. "Those who feel that the essence of the corporation rests in the

contract among its members rather than in the government decree . . . fail to distinguish, as [those in] the eighteenth century did, between the corporation and the voluntary association.”¹

That distinction has always been true and is true now. A corporation is a government-created structure for doing business, and is available only by statute.²

We, as people, have the right to associate. We have a choice to incorporate, if we like the balance of benefits and burdens of incorporating.

I think there might be unintended consequences for our economy—corporations are essential now. Could this amendment upend the complex workings of corporations in our economy?

The People’s Rights Amendment does nothing to change the role of corporations in our economy. The responsibility for defining the economic role of corporations would remain where it had always been before the Court fabricated corporate rights: with the people and our elected representatives. The corporate entity will continue to be a very useful economic tool. Ending “corporate person” rights in the Constitution has nothing to do with federal and state laws that make corporations like “persons” who may enter into contracts, sue and be sued, etc.

In fact, the People’s Rights Amendment, while not intended as an economic reform, will probably help the economy. Corporate “rights” (which is really about multinational corporate power) are harming the American economy. The vast majority of businesspeople and corporations do not need or want “rights” to defy democratically enacted laws or to be pushed into buying more and more political ads. The People’s Rights Amendment would not upend anything about corporations in our economy except the abuse of the Bill of Rights by multinational corporations seeking to attack our laws.

Won’t this lead to big government? Government telling us how much we can spend and so on. I’m against regulation.

Then you should support the People’s Rights Amendment. This Amendment is not regulation. It is about liberty for us as people to debate and decide for ourselves what size government should be or what regulations make sense.

If corporations are not “persons,” how will they be prosecuted in court? Will they have due process? Equal protection?

After the People’s Rights Amendment, corporations will still be able to use the court system, of course, and they may even raise and argue constitutional claims; but they will do so as corporations, not as people. This is related to what lawyers and judges call “standing” to make arguments. Just as an environmental organization has “standing” to argue about a river because the organization has human beings in its membership who are personally affected by the

¹ Oscar Handlin & Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy, Massachusetts, 1774-1861*, 92 & n.18 (New York Univ. Press 1974).

² Harry G. Henn & John R. Alexander, *Law of Corporations*, West Hornbook Series, 14-35 (3d ed. 1981).

pollution in the river, a corporation will sometimes have “standing” to argue the claims of its employees or shareholders.

The People’s Rights Amendment will force courts to address the heart of the matter: What human rights are affected when a corporation challenges democratically enacted laws?

Thus, when BMW Corporation claims, for example, a \$2 million punitive damages judgment violates its due process rights because the judgment is “excessive,” the Court will need to be clear that the due process rights belong to the human shareholders who will be affected by the judgment, or the CEO, who might get a lower bonus as a result of it. Whether that violates the due process rights of the people who lose money due to such a judgment can be determined by the Court, without pretending that the corporation itself has constitutional rights.

Today, the playing field is not level; the largest, global corporations have far more power in the legislatures and the courts than all other businesses. After the People’s Rights Amendment is added to the Constitution, all of our rights as people, as well as the checks and balances of our Constitution and our democratic process will ensure a level playing field for all businesses.

Business and businesspeople will continue to have strong, influential weight in legislatures and agencies after the People’s Rights Amendment. There are many tools to address improper rules or regulations that do not require creating constitutional rights for corporate entities.

How can I get involved to help the campaign for the People’s Rights Amendment?

Free Speech For People and the American Sustainable Business Council are partners in a national non-partisan campaign to overturn the *Citizens United* ruling and to enact the People’s Rights Amendment. We are reaching out to people across the country and across the political spectrum to join us. If you are a business leader, we urge you to add your voice [here](#) and [here](#). We also urge you to help spread the word about this campaign to your customers. We would welcome hearing from you about other ways you might like to get involved, including co-hosting a public event in your community or joining our speaker’s bureau. Please contact us [here](#) and [here](#).