

MOVE TO AMEND

Corporate Hijacking of the 5th Amendment

Onsurface in a series of briefs on how corporate constitutional rights harms you, your family, your community, your environment and/or your democracy

Why this 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.

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 5th Amendment of the U.S. Constitution?

One of the 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.”

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."

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.

Join Move to Amend. Sign the petition at <https://movetoamend.org/motion>.

To get involved, call 916-318-8040.

To read other briefs on corporate hijacking of the 1st, 4th and 14th Amendments as well as the Contracts and Commerce clauses of the U.S. Constitution, go to <https://movetoamend.org/toolkit/corporate-hijacking-us-constitution>

End Corporate Rule. Legalize Democracy. Move to Amend.