

 **END CORPORATE RULE. LEGALIZE DEMOCRACY.**

# MOVE TO AMEND

## Corporate Hijacking of the Commerce Clause

*One in a series of briefs on how corporate constitutional rights harms you, your family, your community, your environment and 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 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: ✓ A local community or state democratically passes a law to protect the 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.

### **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."

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

### **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 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.

*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, 5th and 14th Amendments as well as the Contracts clause of the U.S. Constitution, go to**

**<https://movetoamend.org/toolkit/corporate-hijacking-us-constitution>**

***End Corporate Rule. Legalize Democracy. Move to Amend!***