



## Corporate Hijacking of the Contracts 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 Contracts Clause of the U.S. Constitution? (Article I, Section 8, Clause 3)

“No State shall...pass any...Law impairing the Obligation of Contracts.” States are not to interfere with private contracts -- originally between individuals or between the state and individuals.

### 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 Contracts Clause.

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

1819 - *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat)

Business corporations gained greater powers when the Contracts Clause was expanded to apply from individuals to corporations. The decision established that a corporation was a party in a private contract rather than a creation of public law. Even though the state originally possessed supreme or ultimate power (i.e. “sovereign” power) over a corporation when it issued a charter, the states no longer possessed ultimate sovereignty over their corporation. By merely being a party to the contract with the corporation, the state is unable to exercise authority beyond those privileges, protections and abilities defined by the state in the original corporate charter.

### 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 Contracts Clause made it more difficult to amend or revoke corporate charters or even to impose certain taxes on corporations.

### **Prominent opposition to the corporate hijacking of the Commerce Clause**

Ohio Supreme Court Chief Justice Thomas Bartley in *Bank of Toledo vs. Toledo and Bond* (1 O.S. 622, 1853) stated: "[T]he whole doctrine that the charter of a private corporation is a contract, is founded on a fiction, at variance with the truth or real fact existing. An ordinary act of incorporation contains nothing more than the usual stipulations and provisions to be found in laws generally. Persons asking for the passage of a law incorporating a company, do not in fact think of such a thing as a negotiation for entering into a contract with the State. And the members of the legislature, in the enactment of such laws, never imagine that they are negotiating and settling the terms and conditions of a contract on behalf of the State and much less, that they are by contract, surrendering or parting with a portion of the legislative power of regulation and repeal. In every point of view, therefore, the idea that the charter of a corporation is a contract, whereby this legislative power of regulation and repeal is bargained away, or disposed of by contract, is a legal fiction in opposition to the truth of the fact, and the obvious intention of the persons interested."

### **Take Action**

Lack of 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 Contracts Clause by the Supreme Court. 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 Commerce clause of the U.S. Constitution, go to <https://movetoamend.org/toolkit/corporate-hijacking-us-constitution>**

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