

 **END CORPORATE RULE. LEGALIZE DEMOCRACY.**

# MOVE TO AMEND

## Corporate Hijacking of the 1st Amendment [excluding political free speech]

*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 political “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 First Amendment of the U.S. Constitution?

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### When did corporations first win the “right not to speak and commercial speech” constitutional rights?

1974 - *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241

The U.S. Supreme Court overturned a Florida “right of reply” state law granting political candidates the right to equal space to respond to criticism by a newspaper of their record. The case established the right not to speak -- also called “negative free speech” -- as a First Amendment protection.

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

1980 - *Central Hudson Gas & Electric Corp., v. Public Utilities Comm’n*, 447 U.S. 557

The State of New York enacted a regulation during the mid 1970’s energy crisis banning all utility corporations from promoting the use of electricity in advertisements. The U.S. Supreme Court overturned the regulation claiming it violated the corporation’s “commercial speech” rights. The state’s obligation to protect the welfare of its residents, expressed by promoting energy conservation, was in direct conflict with the utility corporation’s goal of encouraging greater electricity usage and, thus, increasing its profits.

Corporate “commercial speech” rights preempted the state’s right to protect the welfare of its residents.

1986 - *Pacific Gas & Elec. Co. v. Public Utilities Comm’n*, 475 U.S. 1

The U.S. Supreme Court decided that PG&E was not required to allow a ratepayer organization to include counter information to the corporation’s on issues in their billing envelope. This upheld the corporation’s right not to speak (i.e. “negative speech” rights) and protected the corporation’s “freedom of mind.”

1996 - *International Dairy Foods Association v. Amestoy*, 92 F.3d 67 (2nd Cir.)

The U.S. Second Circuit Court of Appeals overturned a Vermont law requiring the labeling of all products containing bovine growth hormones (rBST). The decision affirmed the rights of produce producers containing rBST “not to speak” (i.e. not to be forced to label “this product contains rBST”) over the legitimate rights of consumers to know factual information that many believed protected their health.

2014 - *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751

A landmark decision allowing closely held for-profit corporations to be exempt from a law its owners religiously object to if there is a less restrictive means of furthering the law's interest. The decision permitted the corporation to deny contraceptive health care coverage to female employees. It's the first time that the court recognized a for-profit corporation's claim of religious belief. The decision was an interpretation of the Religious Freedom Restoration Act (RFRA). It didn't directly address whether such corporations are protected by the free exercise of religion clause of the 1st Amendment.

### **How corporate hijacking of this amendment harms you, your family, communities and the environment**

Corporations have hijacked the First Amendment in multiple ways. Their constitutional "right" to donate (or invest) in political campaigns (i.e. political free speech) is the most widely recognized, but is by no means the only instance where courts have preempted the needs and will of the public in favor of corporate interests.

"Commercial," "negative free speech," and "religious" rights represent other aspects of the First Amendment that have been used by corporate entities to defy the legitimate rights of people to know factual information; the authority of government to protect the health, safety and welfare of residents; the provision of basic health needs of employees; and the ability to hold corporations publicly accountable.

The focus of commercial and negative free speech rights-related court cases has centered on the conflict over rights --i.e., the rights of corporations to "remain silent" vs. the public's right to know. The presumption has been that people and corporations have equal claims to rights with cases decided on the merits of the presentation of rights by each side. Absent has been the basic issue of authority -- do *We the People* have or not have the ultimate sovereign authority (what some call "democracy") to determine the extent of corporate claims to free speech rights in specific cases and claims in general to any human rights?

### **Prominent opposition to the corporate hijacking of the First Amendment**

Dissenting in the *Pacific Gas & Electric Co. v. Public Utilities Commission* decision, Supreme Court Justices Rehnquist, White and Stevens asserted: "To ascribe to such entities an 'intellect' or 'mind' for freedom of conscience purposes, is to confuse metaphor with reality." Separately, Justice Rehnquist stated, "[n]or do I believe that negative free speech rights, applicable to individuals and perhaps the print media, should be extended to corporations generally."

Judge Leval stated in his dissent in the *Amestoy* Second Circuit of the U.S Court of Appeals decision : "[T]he true objective of the milk producers is concealment. They do not wish consumers to know that their milk products were produced by use of rBST because there are consumers who, for various reasons, prefer to avoid rBST...In my view, the interest of the milk producers has little entitlement to protection under the First Amendment. The case law that has developed under the doctrine of commercial speech has repeatedly emphasized that the primary function of the First Amendment in its application to commercial speech is to advance truthful disclosure -- the very interest that the milk producers seek to undermine."

### **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 *any* portion of the First Amendment 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 (political free speech), 4th, 5th 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!***