



# The We the People Amendment: The Constitutional Amendment to Counter Political Corruption and the Corporate Hijacking of the Constitution

*by Move To Amend*

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## Executive Summary

- Corruption is the fundamental problem of American politics and government. Its most dangerous forms are excessive and undisclosed election spending and corporate constitutional rights (CCRs). This background paper focuses on CCRs.
- Corporations do not need constitutional rights to conduct business and granting them such rights is unsupported by logic, history, or law.
- CCRs harm We the People because they supersede laws passed by the People's representatives, causing harm to public health and safety, workplace safety, the environment, and democracy itself.
- The only non-violent method for addressing CCRs is a constitutional amendment.
- The We the People Amendment is the only constitutional amendment presently introduced in the current Congress that addresses both money as speech and CCRs.
- The We the People Amendment has considerable public support
- Concerns regarding harmful consequences of an amendment such as the We the People Amendment are unfounded.

## 1. Introduction

Corruption is the fundamental problem of American politics and government. "Corruption" "refers to excessive private interests in the public sphere; an act is corrupt when private interests trump public ones in the exercise of public power..."<sup>1</sup>

The two most basic, pervasive, and dangerous forms of corruption are:

- (1) the excessive amount of money-especially undisclosed money-in elections and politics and its corrosive and corrupting effects on public policy and public confidence in our system of governance, and
- (2) purported federal constitutional rights that were judicially created for corporations (and other artificial entities ). The framers never intended corporations to have the same constitutional rights as natural persons. These court-created CCRs frustrate the popular will as expressed through local, state, and federal legislation and allow corporations to use their economic power to overwhelm the views of the People to the detriment of the public good. For example, court-made CCRs under the Fourth, Fifth, and Fourteenth Amendments and other portions of the Constitution enable corporations to undemocratically impose pollution, water contamination, toxic waste, worker safety violations and other assaults on unwilling local communities and individuals in derogation of local control and democracy itself.

As an elected official you are well aware of the first issue so this background paper will focus on the second. The We the People Amendment is the only proposed constitutional amendment presently before Congress that eliminates all so-called CCRs. Addressing money in politics alone would be a temporary victory because corporations would use their constitutional "rights" to eventually eliminate restrictions on political spending.

## **2. Background**

(Note: Some of the cases cited may no longer be good law. They are cited as examples of what the law was at the time they were decided.)

### a. CCRs Are Illogical

A corporation is a vehicle for people to do business as one entity. State statutes (called charters) originally created corporations as vehicles to accumulate capital for projects (such as building a bridge) deemed beneficial to the public. For an artificial creation that exists only under statutory law to be given constitutional rights that supersede those of humans is illogical.

### b. CCRs Are Unnecessary

State law already protects the legitimate functions of corporations: to act as one entity, to transact business, to own property, to sue and be sued in a court of law, and to enter into contracts. None of these functions require constitutional rights. See, e.g., California Corporation Code, section 207: "...a corporation shall have all of the powers of a natural person in carrying out its business activities..." Move to Amend does not object to any of these powers because they are necessary to conduct business. But granting corporations additional *constitutional* rights is unnecessary because they have all the powers they need to conduct business under state law.

### c. The CCR Doctrine Has No Legal Foundation

One of the causes of the American Revolution was unfair treatment of colonists by the East India Company, a British corporation. Early Americans feared corporations and restrained them.<sup>2</sup>

Corporations are not mentioned in the United States Constitution. Attempts to include them were voted down. Early American corporations were creations of state statutes (called charters) which strictly limited them. Corporate charters were revocable and limited a corporation's lifespan and powers. These charters also limited the corporation's activities to a specific project, usually to serve the public good. Corporations were also subject to unlimited (sometimes double) liability. The modern corporation enjoys limited liability and is virtually unrestricted by charters which can be obtained merely by filing an application and paying a fee.<sup>3</sup>

Early Supreme Court cases distinguished corporations from people. In *Hope Insurance Co. v. Boardman*, 9 U.S. (5 Cranch) 57, 58 (1809) the U.S. Supreme Court unanimously held that "a body corporate as such cannot be a citizen within the meaning of the Constitution." In *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 636 (1819) Supreme Court Chief Justice Marshall explained that a corporation as a "mere creature of law . . . possesses only those properties which the charter confer upon it, either expressly or as incidental to its very existence." In *Bank of Augusta v. Earle*, 38 U.S. 519, 587 (1839) the Supreme Court wrote "The only rights [a corporation] can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state." In *Marshall v. Baltimore & Ohio Railroad Company*, 57 U.S. 314 (1853) the Supreme Court "rebuff[ed] early corporate efforts to create corporate rights" stating "State laws by combining large masses of men under a corporate name, cannot repeal the Constitution."<sup>4</sup>

As popularly but erroneously believed, the case of *Santa Clara County v. Southern Pacific Railroad* 118 U.S. 394 (1886) did not decide that corporations were persons within the meaning of the 14th Amendment. The Court's decision made no such ruling. In fact, the Court explicitly ruled that it would not decide the constitutional question because the case could be (and was) decided on other (state) grounds so it was "not necessary to consider any other questions raised by the pleadings and the facts found by the court." *Id.* at 416, also pp. 410, 411.<sup>5</sup> Confusion that the Supreme Court had given corporations the same 14th amendment rights as natural persons arose from a court reporter's false, unofficial comment. (Comments have no legal validity.)<sup>6</sup>

The 14th Amendment does not mention corporations or give them the rights of persons. Section 1 defines "citizens" as "(a)ll persons born or naturalized in the United States . . ." Only humans can be "born" or "naturalized;" corporations cannot. It also establishes that no state can "deprive any person of life, liberty, or property, without due process of law . . ." Corporations are not alive and cannot be incarcerated. (The remaining sections have nothing to do with corporations.) The purpose of the 14th Amendment was to insure the rights of recently freed slaves. Thus, neither the spirit nor the letter of the 14th Amendment can serve as the basis of granting corporations the rights of people.

In dissent, several notable Supreme Court Justices have forcefully argued against CCRs. "There was no history, logic, or reason given to support that view. Nor was the result so obvious that

exposition was unnecessary." *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949)(J. Douglas, dissent. opin.).<sup>7</sup> Justice Black made similar arguments to Justice Douglas in an earlier dissent: "I do not believe the word 'person' in the Fourteenth Amendment includes corporations." *Connecticut General Life Insurance Company v. Johnson*, 303 U.S. 77 (1938).<sup>8</sup> Justice (later Chief Justice) Rehnquist shared this view.<sup>9</sup>

Cases that create or follow CCRs ignore these facts. Other than the briefest offhand dictum in one case<sup>10</sup> that did not cite *Santa Clara County v. Southern Pacific Railroad*, the Supreme Court has never explained or justified why an artificial entity like a corporation should have the same constitutional rights as natural persons. Every case granting CCRs based on *Santa Clara County v. Southern Pacific Railroad* rests upon a falsehood. Bottom line: CCRs were invented by the combined actions of one court reporter and later by Supreme Court decisions resting on this falsehood.

### **3. Harm Caused By Corporate Constitutional Rights**

The CCR doctrine has given corporations the right to do harm. Time and time again, corporations have successfully challenged the constitutionality of local, state and federal legislation or regulations enacted to protect public health, safety and welfare, the environment and democracy itself. Whenever a court overturns such legislation at the behest of a corporation's claim that it violates the corporation's constitutional rights, all consideration on the merits is precluded because constitutional law has supremacy.

Thus, basing any corporate rights on the Constitution deprives the People of the power to regulate many destructive corporate activities. When the source of corporate laws is statutory, We the People can amend the statutes and regulate corporations through the normal representative legislative process. But by granting constitutional rights to corporations the Supreme Court has harmed our democracy by usurping the People's sovereignty and the constitutional authority of the people's elected representatives.

Modern corporations exist to make as much money as possible. A human being thinks, tries to make ethical decisions, and is motivated by obligations to family and community. Corporations do not take into account all the factors that our elected representatives consider. These include individual rights, the needs of the poor and handicapped, racial and gender discrimination, environmental protection, the threat of climate warming, public health and safety, worker protection and threats to democracy itself.

A corporation is an amoral artificial entity, and its structure separates humans from their actions, thus destroying a sense of moral responsibility. In dissenting from one of the decisions that created the money equals free speech doctrine, conservative Chief Justice Rehnquist noted "The blessings of perpetual life and limited liability ... so beneficial in the economic sphere, pose special dangers in the political sphere." *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

Corporations have used their economic power to buy political power that often defies the will of the vast majority of the people. When courts give constitutional rights to a corporation they are giving constitutional rights to property, not people. Giving them constitutional rights that supersede the rights of We the People destroys representative self government and democracy itself. Here are a few examples:

### **1st Amendment-Non-Money as Speech cases**

#### First Amendment Right Not to Speak

In *National Assoc'n of Mfrs. v. NLRB*, 717 F.3d 947 (2013), the National Labor Relations Board declared in a rule that employers under its jurisdiction who did not post on their properties and on their websites a notice of employee rights would be guilty of an unfair labor practice. This rule would have applied to "nearly 6 million" employers," the great majority" being small businesses. Trade associations and other organizations representing employers sued.

Citing several First Amendment cases the court stated "(t)he right to disseminate another's speech includes the right to decide not to disseminate it." The court did not discuss why the ruling applied to corporations because existing case law already bestowed upon them the right not to speak. "For corporations, as for individuals, the choice to speak includes within it the choice of what not to say." *PG&E v. PUC*, 475 U.S. 1, 16 (1986). Even conservative Justice Rehnquist disagreed in *PG&E v. PUC* that corporations should have the right not to speak, and dissented. *Id.* at pp. 26-35.

The effect of this ruling is to make it more difficult for the NLRB to inform workers of their rights while employers are free to post any notices or other information about labor issues, unions, and union organizing "so long as the communications do not contain a threat of reprisal or force or promise of benefit."

Currently multinational fossil fuel companies are attempting to evade responsibility for decades of lying about the deleterious impacts of climate change by asserting their so-called First Amendment rights.

#### First Amendment Right Not to Speak in Commercial Speech Cases

The Federal Appeals Court overturned a Vermont law requiring the labeling of all products containing bovine growth hormone because the right not to speak applied to commercial speech as well. *International Dairy Foods Association v. Amestoy*, 92 F.3d (2d Cir. 1996)

### **4th Amendment—Search and Seizure**

#### Surprise Inspections of Business Premises Prohibited

When an OSHA inspector tried to do a routine inspection of Barlow's Inc., an electrical and plumbing installation business, the company's president refused to allow the inspector to enter the nonpublic employee area. Relying on the Fourth Amendment's "right of the people to be secure in their persons [and] houses... against unreasonable searches and seizures" the

company's president objected that the inspector lacked a search warrant, even though Section 8(a) of the Occupational Safety and Health Act of 1970 (OSHA) did not require a search warrant for inspections of safety hazards and violations of OSHA regulations. The Secretary of Labor sought an order to compel compliance with the OSHA inspection. Rejecting the Secretary of Labor's argument that surprise inspections are reasonable and essential to OSHA's enforcement, the U.S. Supreme Court ruled that OSHA's Section 8(a) was unconstitutional because it authorized inspections without a warrant. *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978)

In another case, the U.S. Supreme Court overruled the conviction of a business owner who refused to allow the fire department to enter his business for a routine, random inspection. Citing the 4th Amendment, the Court required an administrative warrant to enter commercial premises. *See v. City of Seattle*, 387 U.S. 541, 545-546 (1967).

Even though the 4th Amendment's language specifies only human beings, their homes and personal effects, these decisions treat commercial entities like persons. The result is that governmental attempts to protect the public from a plethora of dangers stemming from private commercial activities (e.g., food contamination, drug impurities, automobile and airplane defects, dangerous conditions, worker safety violations, and environmental hazards) are thwarted by eliminating surprise inspections.

#### ***5th Amendment—Environmental Regulation as Takings***

##### **State Statute to Prevent Sinking Homes 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 which forbade 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 and welfare. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). (The Supreme Court has defined the "police power" as being coextensive with **inherent** state sovereignty, *Nebbia v. New York*, 291 U.S. 502, 524 (1934). States often use the police power to legislate protections for public health, safety, and morality.)

#### **4. Text of the We The People Amendment (HJR 48, introduced by US Representative Pramila Jayapal, WA)**

**House Joint Resolution 48, to be introduced in early 2021<sup>11</sup>**

“ Section 1 . The rights protected by the Constitution of the United States are the rights of natural persons only. Artificial entities, such as corporations, limited liability companies, and other entities, established by the laws of any State, the United States, or any foreign state shall have no rights under this Constitution and are subject to regulation by the People, through Federal, State, or local law. The privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.

“ Section 2 . Federal, State and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate’s own contributions and expenditures, to ensure that all citizens, regardless of their economic status, have access to the political process, and that no person gains, as a result of that person’s money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure. Federal, State, and local governments shall require that any permissible contributions and expenditures be publicly disclosed. The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.

“ Section 3 . Nothing contained in this amendment shall be construed to abridge the freedom of the press.”

## **5. Ending corporate corruption cannot be accomplished by any other means**

When the Supreme Court has rendered a decision interpreting the Constitution the only ways to overturn it are (a) for the Court to reverse itself, (b) to enact a constitutional amendment, or (c) war (e.g. the Civil War, but even then the end of slavery and granting of rights to former slaves was later codified in the 13th, 14th, and 15th Amendments). Given the political leanings of the current Court, it will not reverse itself. If it did, its decision could be altered by mere majority of the Court. These issues are too important to leave in the hands of only nine justices, especially when a single one could decide.

## **6. Although similar amendments have been introduced they are not as complete as the We the People Amendment because they do not eliminate "money as speech" or CCRs**

In the present Congress four other amendments have been introduced.

HJR 1, Democracy for All Amendment (Deutch)<sup>12</sup>

What it does:

- Asserts that Congress and the States (a) may regulate and limit the amount for campaign contributions and expenditures and (b) may distinguish between natural persons and artificial entities when creating campaign finance legislation.

What’s missing:

- Does not end corporate constitutional rights under 1st, 4th, 5th, and 14th Amendments
- Does not end political money as protected speech under 1st Amendment

See: Side-by-Side Comparison of HJR 48 and HJR 1:

[https://d3n8a8pro7vhmx.cloudfront.net/movetoamend/pages/752/attachments/original/1617365844/HJR\\_48\\_and\\_HJR\\_1\\_Comparison.pdf?1617365844](https://d3n8a8pro7vhmx.cloudfront.net/movetoamend/pages/752/attachments/original/1617365844/HJR_48_and_HJR_1_Comparison.pdf?1617365844)

### SJR 11 (Tester)<sup>13</sup>

What it does:

- Asserts that the rights of the Constitution and other rights retained by the people are the rights of natural persons; that the terms ‘people’, ‘person’, and ‘citizen’ do not include any corporate entity, and that corporate entities shall be subject to public regulations

What’s missing:

- Does not end political money as protected speech under 1st Amendment

So, unlike HJR 48, none of the proposals end both the doctrines of political money equals speech under the 1st Amendment and CCRs.

## **7. Overturning *Citizens United v. FEC* is not enough**

Many elected officials and candidates speak of “overturning Citizens United” but overturning that case alone is not sufficient to address the problem of money as speech or CCRs. “Overturning Citizens United” also would not do what people think it would because there have been subsequent Supreme Court decisions such as *McCutcheon v. FEC* 572 U.S. 185 (2014) that further undermine campaign finance regulation.<sup>14</sup>

## **8. Support for HJR 48 or a similar constitutional amendment**

The list of HJR 48 co-sponsors continues to grow.<sup>15</sup>

The We the People Amendment has support from Americans of all political parties—Republicans, Democrats, Greens, Libertarians and Independents alike. Although people of different political parties and ideologies frequently have different positions on policy proposals, this proposed amendment is **not** about policy, but about the principle of self-government. Americans agree that our country should be a self-governing Republic, where “We the People” govern ourselves.

People across the political spectrum took notice when--based on the assumption that corporations are people with the same Constitutional rights as living, breathing human beings--the U.S. Supreme Court in *Citizens United v. the Federal Election Commission* (2010) overturned key provisions of the federal Campaign Reform Act enacted in 2002. The Court ruled that corporate entities, and labor unions, have the same rights as individual people to nearly unrestricted spending on political speech.

Big money reduces the voice of ordinary citizens to a mere whisper. One recent study found that economic elites and business groups have substantial influence on government policy while average people and groups representing them have little or no influence.<sup>16</sup> A more recent survey revealed that “an overwhelming majority of legislators were uninterested in learning

about their constituents views” and that “for most politicians, voters’ views seemed almost irrelevant.”<sup>17</sup>

### Public opinion polls

- A 2010 Washington Post-ABC News poll revealed relatively little difference of opinion across party lines on the issue among those opposed to the ruling: **Democrats (85%), Republicans (76%) and independents (81%)**.
- A 2014 Public Citizen poll showed that the impact of special interest lobbying and election spending on our political system is still viewed unfavorably by: **Republicans (79%), Democrats (76%), and independents (74%)**.
- Many business owners support our effort. Nine in 10 small business owners have a negative view of the role money plays in politics. Most **small business owners (66%)** specifically view the *Citizens United vs. FEC* decision as bad for small business, whereas only 9% said it was good for small business. (Poll conducted Feb 2012 by the American Sustainable Business Council, Main Street Alliance, and Small Business Majority).
- A 2014 survey conducted on behalf of the Small Business Majority showed that “small business owners believe big businesses have an unfair influence on government decisions and the political process—which gives them a competitive advantage over small firms...and that they want government to [adopt] policies that level the playing field with big business and bring fairness to our campaign finance laws.” Of the **72% of small business owners who say major changes are needed to our campaign finance system 48% were Republican, 32 % Democrat and 11 % as independents or other**.
- Reining in corporations is an idea whose time is long overdue. A national telephone poll of all 50 states and the District of Columbia by the Gallup organization in January of 2016 found that **63 % of U.S. adults "say they're dissatisfied with the size and influence of major corporations."** These findings were consistent with those of the previous 10 years.
- **More than 460,000 people have signed Move to Amend's petition** which calls for rejecting the U.S. Supreme Court's *Citizens United* ruling and all other cases that invented CCRs.

### Resolutions and Election Results Confirm Support The “We The People” Amendment

Move to Amend members have lobbied for and helped pass more than 330 local government resolutions, ordinances, or ballot measures in support of an amendment with the same objectives as HJR 48. Six states have passed similar resolutions: California, Hawai'i, Illinois, Washington, Montana, and Vermont. Another 99 local resolutions and seven states support Move to Amend's objectives in part: Colorado, Iowa, Massachusetts, New Jersey, New Mexico, Oregon, and Rhode Island.

Besides liberal bastions like San Francisco, CA and Madison, WI and Boston, MA, we have also won in many different conservative states and communities:

- State of Montana – 75% of the vote
- State of Colorado – 74% of the vote
- Wakeshau, WI – home town of Republican Tea Party Governor Scott Walker, where they haven't voted for a Democrat for President or Congress in 40 years.
- Brecksville, OH – 52% of the vote (in the same election the town voted for Mitt Romney for President by a 2:1 margin)
- Salt Lake City, UT – 88% of the vote.

## 9. Arguments raised against eliminating CCRs and Move to Amend's responses

### a. Non-profit corporations would lose the benefits of (CCRs).

#### Response:

To date, the Supreme Court has granted these CCRs:

- Equal Protection & Due Process (14<sup>th</sup> Amend.)
- No surprise inspections/searches (4<sup>th</sup> Amend.)
- Due Process and Compensation for government takings (5<sup>th</sup> Amend.)
- Political and commercial speech, “negative” speech (1st Amend.)
- Jury trial in criminal case (6<sup>th</sup> Amend.)
- Freedom from double jeopardy (5<sup>th</sup> Amend.)
- Jury trial in civil case (7<sup>th</sup> Amend.)

Each of these rights could be conferred statutorily on for-profit or non-profit corporations therefore CCRs are unnecessary. If neither the states nor Congress enacted such protections it would mean that the People thought they were inadvisable.

Who has really benefited from CCRs? The 14th Amendment was adopted in 1868. Between 1890 and 1910, cases brought under it involving corporations outnumbered those involving the rights of blacks, 288 to 19.<sup>18</sup>

### b. Eliminating corporate constitutional rights (CCRs) would make non-profits such as Planned Parenthood subject to unreasonable searches and seizures.

#### Response:

If the federal constitution were amended to establish that corporations had no rights under it, existing state and federal *statutory* law would protect corporations from unreasonable searches and seizures. E.g., CA Penal Code, Title 12, Chapter 3 (search warrants); United States Code, Title 18, Chapters 109, 205 (searches and seizures). But even absent such statutory protections the U.S. Supreme Court has already recognized the right of corporations to *represent their members' constitutional rights* under appropriate circumstances.

In *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449 (1958) the Alabama attorney general obtained an injunction against the Alabama branch of the NAACP for violating that state's incorporation laws and sought information including the names and addresses of its members. The NAACP complied with the AG's demands except for providing to the membership information.

The Association both urges that it is constitutionally entitled to resist official inquiry into its membership lists, and that it may assert, on behalf of its members, a right personal to them to be protected from compelled disclosure by the State of their affiliation with the Association as revealed by the membership lists. *We think that petitioner argues more appropriately the rights of its members*, and that its nexus with them is sufficient to permit that it act as their representative before this Court. In so concluding, we reject respondent's argument that the Association lacks standing to assert here constitutional rights pertaining to the members, who are not, of course, parties to the litigation.

To limit the breadth of issues which must be dealt with in particular litigation, this Court has generally insisted that parties rely only on constitutional rights which are personal to themselves. *Tileston v. Ullman*, [318 U. S. 44](#); *Robertson and Kirkham*, Jurisdiction of the Supreme Court (1951 ed.), § 298. This rule is related to the broader doctrine that constitutional adjudication should where possible be avoided. *See Ashwander v. Tennessee Valley Authority*, [297 U. S. 288](#), [297 U. S. 346-348](#) (concurring opinion). The principle is not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court. *See Barrows v. Jackson*, [346 U. S. 249](#), [346 U. S. 255-259](#); *Joint Anti-Fascist Refugee Committee v. McGrath*, [341 U. S. 123](#), [341 U. S. 183-187](#) (concurring opinion).

*If petitioner's rank-and-file members are constitutionally entitled to withhold their connection with the Association despite the production order, it is manifest that this right is properly assertable by the Association. To require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion. Petitioner is the appropriate party to assert these rights, because it and its members are, in every practical sense, identical. The Association, which provides in its constitution that "[a]ny person who is in accordance with [its] principles and policies . . ." may become a member, is but the medium through which its individual members seek to make more effective the expression of their own views. (pp. 458-459),( Emphasis added.)*

In other words, the NAACP as a non-profit corporation did not *itself* have the right to object to the AG's demand, but it had the right to assert its *members'* rights where they could not assert their rights themselves without giving up those same rights. So even under this worst case scenario a non-profit would not need CCRs itself, but could assert its members' rights to protect them and their rights.

Moreover, under HJR 48 corporate shareholders, officers, and employees, as well as association members, all retain their rights as individuals, so no legitimate rights will be lost.

c. Corporations need constitutional rights and eliminating CCRs will cause huge financial disruption.

Response:

The Constitution was adopted in 1789. It doesn't mention corporations. The case that purportedly first granted CCRs was *Santa Clara County v. Southern Pacific Railroad Company, supra*, in 1886. Thus corporations had no constitutional rights for nearly a century. During this time they experienced explosive growth unhampered by their lack of CCRs. If eliminating CCRs caused any economic angst Congress and/or the states could enact appropriate legislation to address specific problems. Financial disruption does not appear to be an issue.

The preceding three concerns all have to do with unintended consequences. Move to Amend believes the real danger that desperately requires redress are the *intended* consequences of CCRs wrought by corporations. In fact, we have a bigger problem if we do not act to curtail corporate power.

The 2008 Great Recession nearly brought down the U.S. economy. It was caused in part by corporate lobbying that resulted in repeal of market protections such as the Glass Steagall Act. Corporate profits greatly increased but many people lost their homes and retirement savings. Unless corporate power is brought under control corporations will continue to do whatever they can to maximize profits even if it endangers the economy and the nation.

d. Constitutional amendments are very difficult to adopt. Including CCRs makes it more difficult.

Response:

Not all constitutional amendments are difficult to adopt. The 26th Amendment lowering the voting age to 18 was adopted in three months, eight days! Why? Because its time had come. Eighteen to 20 year olds were fighting and dying in Vietnam and public opinion strongly favored enfranchising them.

Most amendments take substantially longer. Yet, corporate influence and public awareness of it over virtually every aspect of our lives and sectors of our society has arguably never been greater. Public demand for fundamental change indicates the time has come for ending corporate constitutional rights.

The same forces that oppose an amendment establishing that money is not free speech protected by the First Amendment will likely also oppose an amendment prohibiting CCRs. In each instance the power of the powerful would be decreased. Excluding the issue of CCRs from an amendment limiting money in politics might make it easier to pass. However, it would leave corporations with more power than the Founders intended them to have, more power than

they need to function, and more power than We the People whose democratically passed legislation has been overturned by CCRs.

The time has come for both the reforms in HJR 48.

## Conclusion

Our present political crisis cries out for many reforms. However, unless the underlying corruption caused by unregulated campaign contributions and CCRs is addressed, all effective reforms will be stalled, blocked, or watered down. The We the People Amendment is the reform that makes all other reforms possible.

The fundamental principle of democracy is that We the People are the source of all political power. HJR 48 is the only proposed constitutional amendment that restores the People's power to where it rightfully belongs.

## Endnotes

<sup>1</sup>Teachout, *Corruption in America*, 2014, p.9.

<sup>2</sup>Nace, *Gangs of America*, 2003, chaps. 3, 4 (available online: <http://www.gangsofamerica.com/read.html>).

<sup>3</sup>Nace, op. cit., chapt. 5.

<sup>4</sup>Clements, *Corporations Are Not People*, 2012, p. 66.

<sup>5</sup>Nace, op. cit., chapt. 9.

<sup>6</sup>Hartmann, *Unequal Protection: How Corporations Became "People" and How You Can Fight Back*, 2d ed., 2010, pp. 14-48.

<sup>7</sup>Justice Douglas' dissent in *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949) continued: The Fourteenth Amendment became a part of the Constitution in 1868. In 1871 a corporation claimed that Louisiana had imposed on it a tax that violated the Equal Protection Clause of the new Amendment. Mr. Justice Woods (then Circuit Judge) held that 'person' as there used did not include a corporation and added, 'This construction of the section is strengthened by the history of the submission by congress, and the adoption by the states of the 14th amendment so fresh in all minds as to need no rehearsal.' *Insurance Co. v. New Orleans*, [Fed.Cas.No 7,052](#), 1 Woods 85, 88. What was obvious to Mr. Justice Woods in 1871 was still plain to the Court in 1873. Mr. Justice Miller in the Slaughter House Cases, 16 Wall. 36, 71, adverted to events 'almost too recent to be called history' to show that the purpose of the Amendment was to

protect human rights-primarily the rights of a race which had just won its freedom. And as respects the Equal Protection Clause he stated, 'The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.' 16 Wall. at page 81.

Moreover what was clear to these earlier judges was apparently plain to the people who voted to make the Fourteenth Amendment a part of our Constitution. For as Mr. Justice Black pointed out in his dissent in *Connecticut General Co. v. Johnson*, 303 U.S. 77, 87, 441, the submission of the Amendment to the people was on the basis that it protected human beings. There was no suggestion in its submission that it was designed to put negroes and corporations into one class and so dilute the police power of the States over corporate affairs. Arthur Twining Hadley once wrote that 'The Fourteenth Amendment was framed to protect the negroes from oppression by the whites, not to protect corporations from oppression by the legislature. It is doubtful whether a single one of the members of a Congress who voted for it had any idea that it would touch the question of corporate regulation at all.'

Both Mr. Justice Woods in *Insurance Co. v. New Orleans*, supra, Fed. Cas.No. 7,052, 1 Woods page 88, and Mr. Justice Black in his dissent in *Connecticut General Co. v. Johnson*, supra, 303 U.S. at pages 88-89, 58 S. Ct. at pages 441-442, have shown how strained a construction it is of the Fourteenth Amendment so to hold. Section 1 of the Amendment provides:

'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without [337 U.S. 562, 579] due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' (Italics added.)

'Persons' in the first sentence plainly include only human beings, for corporations are not 'born or naturalized.'

Corporations are not 'citizens' within the meaning of the first clause of the second sentence. *Western Turf Ass'n v. Greenberg*, 204 U.S. 359, 363, 385; *Selover, Bates & Co. v. Walsh*, 226 U.S. 112, 126, 72.

It has never been held that they are persons whom a State may not deprive of 'life' within the meaning of the second clause of the second sentence.

'Liberty' in that clause is 'the liberty of natural, not artificial, persons.' *Western Turf Ass'n v. Greenberg*, supra, 204 U.S. at page 363, 27 S.Ct. at page 385, 386.

But 'property' as used in that clause has been held to include that of a corporation since 1889 when *Minneapolis R. Co. v. Beckwith*, 129 U.S. 26, was decided.

It requires distortion to read 'person' as meaning one thing, then another within the same clause and from clause to clause. It means, in my opinion, a substantial revision of the Fourteenth Amendment. As to the matter of construction, the sense seems to me to be with Mr. Justice Woods in *Insurance Co. v. New Orleans*, supra, [Fed.Cas.No.](#) 7,052, 1 Woods at page 88, where he said, 'The plain and evident meaning of the section is, that the persons to whom the equal protection of the law is secured are persons born or

naturalized or endowed with life and liberty, and consequently natural and not artificial persons.'

History has gone the other way. Since 1886 the Court has repeatedly struck down state legislation as applied [337 U.S. 562 , 580] to corporations on the ground that it violated the Equal Protection Clause. Every one of our decisions upholding legislation as applied to corporations over the objection that it violated the Equal Protection Clause has assumed that they are entitled to the constitutional protection. But in those cases it was not necessary to meet the issue since the state law was not found to contain the elements of discrimination which the Equal Protection Clause condemns. But now that the question is squarely presented I can only conclude that the Santa Clara case was wrong and should be overruled.

One hesitates to overrule cases even in the constitutional field that are of an old vintage. But that has never been a deterrent heretofore and should not be now. We are dealing with a question of vital concern to the people of the nation. It may be most desirable to give corporations this protection from the operation of the legislative process. But that question is not for us. It is for the people. If they want corporations to be treated as humans are treated, if they want to grant corporations this large degree of emancipation from state regulation, they should say so. The Constitution provides a method by which they may do so. We should not do it for them through the guise of interpretation. *Wheeling Steel Corp. v. Glander*, 337 U.S. at 577-581 (footnotes omitted).

<sup>8</sup>Justice Black continued in *Connecticut General Life Insurance Company v. Johnson*, 303 U.S. 77 (1938):

'The doctrine of stare decisis, however appropriate and even necessary at times, has only a limited application in the field of constitutional law.' This Court has many times changed its interpretations of the Constitution when the conclusion was reached that an improper construction had been adopted. Only recently the case of *West Coast Hotel Company v. Parrish*, 300 U.S. 379, 57 S.Ct. 578, 108 A.L.R. 1330, expressly overruled a previous interpretation of the Fourteenth Amendment which had long blocked state minimum wage legislation. When a statute is declared by this Court to be unconstitutional, the decision until reversed stands as a barrier against the adoption of similar legislation. A constitutional interpretation that is wrong should not stand. I believe this Court should now overrule previous decisions which interpreted the Fourteenth Amendment to include corporations. Neither the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection [303 U.S. 77, 86]. The historical purpose of the Fourteenth Amendment was clearly set forth when first considered by this Court in the *Slaughter House Cases*, 16 Wall. 36, decided April, 1873-less than five years after the proclamation of its adoption. Mr. Justice Miller, speaking for the Court, said:

'Among the first acts of legislation adopted by several of the States in the legislative bodies which claimed to be in their normal relations with the Federal government, were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that

their freedom was of little value, while they had lost the protection which they had received from their former owners from motives both of interest and humanity. 'These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced ... the conviction that something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. (Congressional leaders) accordingly passed through Congress the proposition for the fourteenth amendment, and ... declined to treat as restored to their full participation in the government of the Union the States which had been in insurrection, until they ratified that article by a formal vote of their legislative bodies.' 16 Wall. 36, at page 70. Certainly, when the Fourteenth Amendment was submitted for approval, the people were not told that the states of the South were to be denied their normal relationship with the Federal Government unless they ratified an amendment granting new and revolutionary rights to corporations. This Court, when the Slaughter House Cases were decided in 1873, had apparently discovered no such purpose. The records of the time can be searched in vain for evidence that this amendment was adopted for the benefit of corporations. It is true [303 U.S. 77, 87] that in 1882, twelve years after its adoption, and ten years after the Slaughter House Cases, supra, an argument was made in this Court that a journal of the joint Congressional Committee which framed the amendment, secret and undisclosed up to that date, indicated the committee's desire to protect corporations by the use of the word 'person.' Four years later, in 1886, this Court in the case of Santa Clara County v. Southern Pacific Railroad, 118 U.S. 394, 6 S.Ct. 1132, decided for the first time that the word 'person' in the amendment did in some instances include corporations. A secret purpose on the part of the members of the committee, even if such be the fact, however, would not be sufficient to justify any such construction. The history of the amendment proves that the people were told that its purpose was to protect weak and helpless human beings and were not told that it was intended to remove corporations in any fashion from the control of state governments. The Fourteenth Amendment followed the freedom of a race from slavery. Justice Swayne said in the Slaughter Houses Cases, supra, that: 'By 'any person' was meant all persons within the jurisdiction of the State. No distinction is intimated on account of race or color.' Corporations have neither race nor color. He knew the amendment was intended to protect the life, liberty, and property of human beings.

The language of the amendment itself does not support the theory that it was passed for the benefit of corporations.

The first clause of section 1 of the amendment reads: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' Certainly a corporation cannot be naturalized and 'persons' here is not broad enough to include 'corporations.'

The first clause of the second sentence of section 1 reads: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' While efforts have been made to persuade this Court to allow corporations to claim the protection of his clause, these efforts have not been successful.

The next clause of the second sentence reads: 'Nor shall any State deprive any person of life, liberty, or property, without due process of law.' It has not been decided that this

clause prohibits a state from depriving a corporation of 'life.' This Court has expressly held that 'the liberty guaranteed by the 14th Amendment against deprivation without due process of law is the liberty of natural, not artificial persons.' Thus, the words 'life' and 'liberty' do not apply to corporations, and of course they could not have been so intended to apply. However, the decisions of this Court which the majority follow hold that corporations are included in this clause in so far as the word 'property' is concerned. In other words, this clause is construed to mean as follows: 'Nor shall any State deprive any human being of life, liberty or property without due process of law; nor shall any State deprive any corporation of property without due process of law.'

The last clause of this second sentence of section 1 reads: 'Nor deny to any person within its jurisdiction the equal protection of the laws.' As used here, 'person' has been construed to include corporations. [303 U.S. 77, 89] Both Congress and the people were familiar with the meaning of the word 'corporation' at the time the Fourteenth Amendment was submitted and adopted. The judicial inclusion of the word 'corporation' in the Fourteenth Amendment has had a revolutionary effect on our form of government. The states did not adopt the amendment with knowledge of its sweeping meaning under its present construction. No section of the amendment gave notice to the people that, if adopted, it would subject every state law and municipal ordinance, affecting corporations, (and all administrative actions under them) to censorship of the United States courts. No word in all this amendment gave any hint that its adoption would deprive the states of their long-recognized power to regulate corporations. The second section of the amendment informed the people that representatives would be apportioned among the several states 'according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.' No citizen could gather the impression here that while the word 'persons' in the second section applied to human beings, the word 'persons' in the first section in some instances applied to corporations. Section 3 of the amendment said that 'no person shall be a Senator or Representative in Congress,' (who 'engaged in insurrection'). There was no intimation here that the word 'person' in the first section in some instances included corporations.

This amendment sought to prevent discrimination by the states against classes or races. We are aware of this from words spoken in this Court within five years after its adoption, when the people and the courts were personally familiar with the historical background of the amendment. 'We doubt very much whether any action of a State not directed by way of discrimination against [303 U.S. 77, 90] the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision.' Yet, of the cases in this Court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of 1 per cent invoked it in protection of the negro race, and more than 50 per cent. asked that its benefits be extended to corporations.

If the people of this nation wish to deprive the states of their sovereign rights to determine what is a fair and just tax upon corporations doing a purely local business within their own state boundaries, there is a way provided by the Constitution to accomplish this purpose. That way does not lie along the course of judicial amendment

to that fundamental charter. An amendment having that purpose could be submitted by Congress as provided by the Constitution. I do not believe that the Fourteenth Amendment had that purpose, nor that the people believed it had that purpose, nor that it should be construed as having that purpose." *Connecticut General Life Insurance Company v. Johnson*, 303 U.S. at 85-90. (emphasis added).

<sup>9</sup>Justice Rehnquist wrote in *First Nat'l Bank of Boston v. Belotti*, 435 U.S. 765 (1978): "This Court decided at an early date, with neither argument nor discussion, that a business corporation is a "person" entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment." *Id.*, p. 822. "A State grants to a business corporation the blessings of potentially perpetual life and limited liability to enhance its efficiency as an economic entity. ...those properties, so beneficial in the economic sphere, pose special dangers in the political sphere." *Id.*, pp. 825-826. In that case he dissented to granting corporations constitutional rights. *Id.*, pp. 822, 828.

<sup>10</sup>Research found only one case where the Supreme Court suggested the briefest of explanations why an artificial entity like a corporation should be deemed a person within the Fourteenth Amendment. In *Pembina Consolidated Silver Mining Co. v. Pennsylvania*, 125 U.S. 181 (1888) it stated:

*Under the designation of "person" [in the Fourteenth Amendment] there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose and permitted to do business under a particular name and have a succession of members without dissolution. As said by Chief Justice Marshall: 'The great object of a corporation is to bestow the character and properties of individuality on a collective and changing body of men.'" *Providence Bank v. Billings*, 4 Pet. 514, 29 U. S. 562. *Pembina* at pp. 188-189.*

*Note that the language cited in the Providence Bank v. Billings opinion mentions "the character and properties of individuality" not corporate rights. Nothing in the case concerns CCRs because Providence Bank was decided in 1830. It appears that the Court, knowing it was on thin ice because it had no legal basis for finding corporations in the Fourteenth Amendment, plucked this quotation out of an old, inapplicable case to provide an appearance of legal cover for its off the cuff statement.*

<sup>11</sup>[https://d3n8a8pro7vhmx.cloudfront.net/movetoamend/pages/752/attachments/original/1617366367/JAYAPAL-We\\_The\\_People\\_Amendment\\_Text.pdf?1617366367](https://d3n8a8pro7vhmx.cloudfront.net/movetoamend/pages/752/attachments/original/1617366367/JAYAPAL-We_The_People_Amendment_Text.pdf?1617366367)

<sup>12</sup><https://www.congress.gov/bill/117th-congress/house-joint-resolution/1/text?q=%7B%22search%22%3A%5B%22hjr1%22%5D%7D&r=1&s=1>

<sup>13</sup><https://www.congress.gov/bill/117th-congress/senate-joint-resolution/11/text?q=%7B%22search%22%3A%5B%22sjr11%22%5D%7D&r=1&s=3>

<sup>14</sup>[https://www.huffpost.com/entry/mccutcheon-v-fec\\_n\\_5076518](https://www.huffpost.com/entry/mccutcheon-v-fec_n_5076518)

<sup>15</sup> List of co-sponsors in the 116th Session of Congress,  
<https://www.congress.gov/bill/116th-congress/house-joint-resolution/48/cosponsors?q=%7B%22search%22%3A%5B%22hjr48%22%5D%7D&r=1&s=6>

<sup>16</sup> Gilens and Page, *Testing Theories of American Politics: Elites, Interest Groups and Average Citizens*, 2014, <https://osf.io/c2sp6/>

<sup>17</sup> Kalla and Porter, *Politicians Don't Actually Care What Voters Want*, N.Y. Times, OP-ED, A-23, July 11, 2019.

<sup>18</sup> Logan, Rayford Whittingham (1965). *The betrayal of the Negro, from Rutherford B. Hayes to Woodrow Wilson*. New York: Collier Books. p. 100. (This work was cited in a secondary source; we have not found a copy of it yet. We have seen a similar statistic cited elsewhere.)

4/1/21

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