



Free Speech For People (FSFP) is a national, non-partisan campaign seeking to restore democracy to the people and to ensure that people, not corporations, govern in America. FSFP is dedicated to overturning, through a 28th Amendment to the US Constitution, the US Supreme Court's January 2010 ruling in *Citizens United v. FEC* and a corporate rights doctrine, which threatens our elections and our self-government.

What is the problem?

On January 21, 2010, the US Supreme Court, in *Citizens United v. FEC*, overturned longstanding precedent barring corporate expenditures in our elections. This ruling presents a serious and direct threat to our democracy, unleashing a torrent of corporate money in our political process unmatched by any campaign expenditure totals in our history. The ruling also marks the most extreme extension yet of a corporate rights doctrine that has placed corporations over people. Corporations have used this fabricated doctrine in recent years to strike down democratically—enacted laws in the environmental, health care, consumer rights, and civil rights fields, among others. In doing so, they have threatened the fundamental promise of American government: of, for, and by the people.

Since the late 1970s, a divided Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade democratic control and sidestep sound public welfare measures. Before 1976, there was no such thing as protected “commercial speech” under the First Amendment. For the first two centuries of the American republic, corporations did not have First Amendment rights to limit the reach of democratically enacted regulations. And states and Congress could regulate or prevent corporate contributions and expenditures in elections. With increasing aggressiveness, the judiciary has used the newly-minted corporate speech doctrine to strike down state and federal laws concerning clean and fair elections, environmental protection, energy, tobacco and alcohol, health care, consumer protection, lottery and gambling and much more.¹

The *Citizens United* ruling, which allows corporations to make expenditures in elections using their general treasury funds, has dramatically changed the landscape of elections in this country. Just prior to the September 2009 re-argument before the Court in the *Citizens United* case, *The New York Times* ran an editorial, “A Threat to Fair Elections,” which included this critical point: “In the 2008 election cycle, Fortune 100 companies alone had combined revenues of \$13.1 trillion and profits of \$605 billion. That dwarfs the \$1.5 billion that Federal Election Commission-registered political parties spent during the same election period, or the \$1.2 billion spent by federal political action committees.” The editorial concluded: “If the court races to overturn federal and state laws, and well-established precedents, to free up corporations to drown elections in money, it will be swinging for the fences. The American public will be the losers.” “A Threat to Fair Elections,” *The New York Times*, September 8, 2009, A24, available here: http://www.nytimes.com/2009/09/08/opinion/08tue1.html?_r=3&hp

¹ While the fabrication of corporate rights under the US Constitution dates back to a misreading of an 1886 Supreme Court ruling (*Santa Clara County v. Southern Pacific Railroad*), corporations have advanced this claim in modern-day jurisprudence primarily via the First Amendment.

Why is a Constitutional amendment necessary?

There are only two ways a Supreme Court ruling can be overturned. The Court could do so itself via a new case or the people can do so via a Constitutional amendment.

Throughout our history, Americans have made the Constitution that we know today by using the Article V amendment process to protect and expand democracy. As Yale Law Professor Akhil Amar explains, the process has been particularly effective in responding to egregious Supreme Court decisions:

The Sixteenth Amendment marked the third time that the American people rose up to say no to a Supreme Court decision that had favored propertied interests at the expense of other constitutional values. In the 1790s, the Eleventh Amendment overruled *Chisholm v. Georgia*, which had threatened to give some creditors more than they were legally entitled to under contracts they had made with state governments. In the 1860s, the Fourteenth Amendment likewise repudiated Dred Scott, which had glorified slaveholders' property rights as the Constitution's summum bonum . . . As in the eighteenth and nineteenth centuries, so in the twentieth: In 1913, Americans once again declared that the Court had blundered.²

The Court's ruling in *Citizens United* demands that, once again, we the people use the constitutional amendment process to defend our democracy.

The call for a constitutional amendment complements various legislative reforms now being pressed in response to the *Citizens United* ruling. While such reforms -- including public funding of elections, disclosure, and shareholder approval -- are necessary steps to challenge the distorting impact of monied interests in our political process, the *Citizens United* ruling demonstrates that a new parallel campaign is needed to correct the Supreme Court's reformulation of the Constitution into a charter of corporate power. As critical as such legislative reforms are for the health of our democracy, we must be prepared to confront the reality, created by the nation's highest court, of unlimited corporate money now entering directly into our elections. Further, the Supreme Court's ruling in the *Citizens United* case marks a pivotal moment in the extension of corporate rights under the Constitution and requires the most powerful response available to the citizenry: an amendment to the US Constitution.

As emphasized earlier, the *Citizens United* ruling not only concerns campaign finance or "money in politics." Americans across the political spectrum recognize the danger of a corporate rights doctrine that undermines the ability of the people to address a wide range of concerns that threaten our democracy and strength as a nation. Free Speech for People seeks to seize this opportunity to unite people across numerous issues and party lines to address the fundamental relationship of corporate power and American democracy.

What will the People's Rights Amendment say and what will it do?

The People's Rights Amendment will overturn the *Citizens United v. FEC* ruling and a corporate rights doctrine and will restore our Constitution and democracy to the people. The People's Rights Amendment will end the misuse and abuse of people's constitutional rights by multinational

² AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY*, 405 (Random House, Inc. 2005)

corporations to subvert democratically enacted laws and to gain advantage over competitors. The amendment makes clear that corporations are not people with constitutional rights and ensures that people, not corporations, govern in America.

The Free Speech for People Campaign will work with others to develop specific language for the People's Rights Amendment. Here is one example of language for the People's Rights Amendment:

Amendment XXVIII

Section 1. We the people who ordain and establish this Constitution intend the rights protected by this Constitution to be the rights of natural persons.

Section 2. People, person, or persons as used in this Constitution does not include corporations, limited liability companies or other corporate entities established by the laws of any state, the United States, or any foreign state, and such corporate entities are subject to such regulation as the people, through their elected state and federal representatives, deem reasonable and are otherwise consistent with the powers of Congress and the States under this Constitution.

Section 3. Nothing contained herein shall be construed to limit the people's rights of freedom of speech, freedom of the press, free exercise of religion, and such other rights of the people, which rights are inalienable.

Is a Constitutional amendment an appropriate response?

Yes. We have amended the Constitution 27 times, and 17 times since the ratification of the Bill of Rights. Most of these Amendments corrected what the American people understood were improper restrictions on the right of all people to participate in self-government on equal terms. The 13th Amendment ended slavery, the 14th guaranteed liberty, due process and equal protection of all, and the 15th guaranteed that the right to vote could not be abridged on account of race. Adopting the 16th Amendment, the people overruled the Supreme Court's decision barring a federal income tax. With the 17th Amendment (1913), the people insisted upon the right to elect Senators, who previously were elected by the state legislatures. With the 19th Amendment, the people guaranteed the right of women to vote, overruling the Supreme Court's view that equal protection of all persons under the 14th amendment did not mean all persons but only men. The 24th Amendment was adopted in 1964 to eliminate the poll tax, which was used to block poor people, often African Americans, from voting. The 26th Amendment in 1971, again overruling a Supreme Court holding, ensured that the right to vote included men and women age 18 and older.

In 1999, a bipartisan and non-partisan group of scholars, judges, legal professionals and citizens were brought together by the Century Foundation to consider guidelines for considering when Constitutional amendments are appropriate and when they are not. The conclusions may be found in *"Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change"*, A Publication of Citizens for the Constitution, The Century Foundation Press, NY 1999. While correctly recommending caution and restraint in turning to amendment solutions, the group concluded that "there have been times in our history when arguments for restraint have been counterbalanced by the compelling need for reform." "Great and Extraordinary Occasions" recommended guidelines for determining when those moments in history compel the amendment solution. Under these guidelines, including whether the "proposed amendments address matters that are of more than immediate concern and that are likely to be recognized as of abiding importance by subsequent generations," and whether "the proposed amendment make our system more politically responsive

or protect individual rights,” a People’s Rights Amendment to restore the ability of the American people to regulate corporations as the people see fit, particularly with respect to our elections, is appropriate and necessary.

How will the Constitution be amended?

The Constitution itself defines how the people may amend it. Article V states:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

We have enacted all of our 27 amendments to the US Constitution through the route of Congress passing an amendment bill and sending it to the states for ratification.

The Free Speech for People Campaign intends to seek Congressional and State legislature approval of the amendment to overturn the *Citizens United* ruling and a corporate rights doctrine and to restore our Constitution and our democracy to the people.

Will the People's Rights Amendment limit speech?

No. The People's Rights Amendment will preserve and protect free speech for everyone. Eliminating corporate money in politics or eliminating the ability of corporations to strike down laws that executives of a corporation may think limit corporate marketing campaigns will not affect the speech rights of a single person.

Defenders of the creation of a corporate rights doctrine in the First Amendment try to twist the right of free speech into some immunity from regulation for any advertising or corporate expenditure to disseminate a corporate message. Legislative action directed at corporations has nothing to do with the worth of particular speech but rather with a particular statutory capacity through which certain people wish to promote their speech, and their power. If executives and shareholders may not use their corporation to advance political positions, nothing would prevent those people who are executives and shareholders from making any speech they want, or spending any of their own money to disseminate that speech.

The People’s Rights Amendment protects all rights of all people, whether or not they own, run, work for, or buy from corporations. Whether the rights at issue are speech, due process, or any other human right, the people involved in a corporation – the CEO and executives, employees, shareholders, or other people in a corporation – retain all of their rights as people.

The People’s Rights Amendment simply means that we will not allow courts to pretend that corporations are people when it comes to the Constitution.

What about the press?

The People's Rights Amendment will do nothing to infringe freedom of speech or of the press. The First Amendment clearly prevents government suppression of "the press," whether a corporation or not, and that is as it should be.

Regardless of whether the New York Times, Fox News, and other media are operated by people using the corporate form, the media are "press" under the First Amendment, and are not subject to restriction of expression or press activities. These corporations that meet the constitutional definition of press, of course will need to comply with laws regulating corporations, just as they do today. It is not an infringement on the freedom of the press to make the New York Times Company or Fox News' parent corporation file SEC statements, obey securities "black-out" rules about public statements, and comply with other corporate regulations.

The American people, legislatures and the Court all are perfectly capable of distinguishing between corporate-funded campaign electioneering communications and the content, whether political or not, of the press and media. We do not need to pretend that all corporations become "press" whenever their executives want to influence the outcome of our elections or evade regulations.

Will the People's Rights Amendment prevent people from joining together into political parties, citizens' organizations, associations, unions or other groups to participate in elections and public debate?

No. The People's Rights Amendment applies to corporate entities and has no application to voluntary associations and does not change constitutionally protected freedom of association. People are always free to associate with others to promote their speech or engage in political activity.

The People's Rights Amendment simply means that if we the people decide through our legislatures to authorize corporate entities and create advantages for such entities, we may also limit the misuse of those entities for political purposes. The People's Rights Amendment does not apply to groups that are not corporate entities, nor does the Amendment prevent Congress or the States from allowing corporate entities to engage in political activity or "speech" if that's what our legislatures decide to do. The People's Rights Amendment simply overrules the idea that five Supreme Court Justices can prevent the people from making choices about what corporate entities may do.

What will be the impact of the People's Rights Amendment on day-to-day business operations? Do corporations have to be "persons" in order to function in our economy?

The People's Rights Amendment will have no impact on day-to-day or other operations of corporations. No activity of a business corporation requires the fabrication of corporate constitutional rights. The rights of individual people (doing business in a corporation or otherwise) are unchanged by the People's Rights Amendment. For centuries, corporations were able to carry out their business purposes without the fabrication of constitutional rights, and until 1978 "corporate speech rights" did not exist

What effect will the People's Rights Amendment have on our ability to use corporate entities in our business dealings?

None. The People's Rights Amendment does not limit in any fashion the many ways in which people and the states can design and use corporate or other economic legal entities.

What will be the impact of the Amendment on company political action committees (PACs) and employee contributions?

The People's Rights Amendment will have no impact on laws that apply to political action committee (PAC) contributions and individual contributions made by company employees or others. Instead, the People's Rights Amendment overturns *Citizens United*, and restores to the people and our elected representatives the power and the duty to enact laws and regulations that ensure elections are free, fair, and serve our democracy

Who Funds Free Speech For People?

Free Speech For People is a nonpartisan, nonprofit organization that receives funding from individuals and foundations across the country..

What can people do?

We can do what we have done before in our nation's history when we saw the need to amend our Constitution to defend our democracy. We can organize in support of a 28th Amendment that makes clear that people, not corporations, govern in America.

There are many ways you can get involved in this campaign:

- Sign our resolution at www.freespeechforpeople.org to add your name and to stay updated on action alerts and new developments.
- Tell your family, friends, and neighbors about this campaign.
- If you have a Facebook page, post a link to our campaign site.
- Contact your federal, state, and local elected officials – urge them to get on board in support of this constitutional amendment.
- Write a letter to the editor in support of this campaign, urging others to get involved.
- Post a piece on a blog.
- Write an opinion piece for your local newspaper.
- Call into a local radio talk show to discuss this campaign.
- Host a house party and invite your family, friends, and neighbors to learn more about this campaign.
- Create a local organizing committee to educate your community and to advocate for this amendment.
- Meet with other community leaders and ask them to join the campaign.
- Enlist business leaders in your community to join in support.
- Work with others to pass resolutions at the local and state level calling for an amendment.
- Make a donation to support Free Speech For People.
- Stand up and make your voice heard.