

June 18, 2013

The Hon. Jon Tester  
United States Senate  
706 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Tester,

On behalf of Free Speech For People, we write to endorse your important new constitutional amendment bill to overturn the US Supreme Court's 2010 ruling in *Citizens United v. FEC* and to make clear that corporations are not people with constitutional rights.

[Free Speech For People](http://www.freespeechforpeople.org) is national campaign launched on the day of the *Citizens United* ruling to challenge the misuse of corporate power and to restore republican democracy to the people. We have helped to catalyze and lead the growing movement across the country to amend the U.S. Constitution to overturn *Citizens United*, *Buckley v. Valeo* (the Supreme Court's 1976 ruling sanctioning today's system of unlimited campaign spending), and the fabrication of corporate constitutional rights. We also engage in legal advocacy and corporate charter reform to advance further the work of ensuring that people, not corporations, shall govern in America.

Your constitutional amendment bill is grounded in the fundamental promise of American self-government. The Supreme Court's 5-4 ruling in *Citizens United* – holding that corporations have the same free speech rights as people in the political process and may spend unlimited amounts of their corporate money in our elections – runs contrary to the Framers' intent<sup>1</sup> and to the foundation of our republican democracy.

The ruling, in fact, marks the most extreme extension of a fabricated corporate rights doctrine under the First Amendment that has eroded free speech principles and undermined our self-government for the past thirty years. While the fictitious claim of corporate constitutional rights dates back to the headnotes of an 1886 ruling of the Supreme Court, it is through this modern-day fabrication under the First Amendment that we now face the threat of unchecked corporate power subverting our democracy.

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<sup>1</sup> The Framers of our Constitution were clear that we were to be a government of, by, and for the people. They recognized that corporations were not people and that the Constitution did not, therefore, guarantee corporations rights that were intended for people. James Madison said corporations were “a necessary evil” subject to “proper limitations and guards.” Thomas Jefferson said he hoped to “crush in its birth the aristocracy of our moneyed corporations.”

With increasing aggressiveness, the judiciary has used this new corporate rights doctrine to strike down federal and state laws regulating corporate conduct. Even a partial list of decisions striking down public laws shows the range of regulations falling to this doctrine, from those concerning clean and fair elections; to environmental protection and energy; to tobacco, alcohol, pharmaceuticals, and health care; to consumer protection, lotteries, and gambling; to civil rights, and much more.<sup>2</sup>

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<sup>2</sup> See *First Nat'l Bank of Boston v. Bellotti* 435 U.S. 765 (1978) (invalidating Massachusetts law barring corporate expenditures to influence ballot initiatives); *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (as applied to issue advocacy advertisements of non-profit corporation, BCRA held to violate First Amendment); *Thompson v. Western States Med. Ctr.*, 535 U.S. 357 (2002) (federal restriction on advertising of compounded drugs invalidated); *Lorillard v. Reilly*, 533 U.S. 525 (2001) (Massachusetts regulations of tobacco advertising targeting children invalidated); *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173 (1999) (federal restriction on advertising of gambling and casinos held unconstitutional); *44 LiquorMart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (Rhode Island law restricting alcohol price advertising invalidated); *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995) (federal restriction on advertising alcohol level in beer invalidated); *City of Cincinnati v. Discovery Network Inc.*, 507 U.S. 410 (1993) (municipal application of handbill restriction to ban news racks for advertising circulars on public property held unconstitutional); *Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1 (1986) (invalidating California rule that utility corporation must make bill envelopes, which are property of ratepayers, available for other points of view besides that of the corporation); *Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980) (New York rule restricting advertising that promotes energy consumption invalidated); *Bellsouth Telecomm., Inc. v. Farris*, 542 F.3d 499 (6th Cir. 2008) (Kentucky may not prohibit corporation from stating on the customer bill that a fee that is to be assessed from the corporation and not passed on to consumers was a "tax" suggesting inaccurately that consumers paid in their bill); *Allstate Ins. Co. v. Abbott*, 495 F.3d 151 (5th Cir. 2007) (Texas law regulating advertising of auto body shops tied to auto insurers invalidated); *This That & the Other Gift & Tobacco, Inc. v. Cobb County, Georgia*, 439 F.3d 1275 (11th Cir. 2006) (Georgia ban on advertisements of sexual devices invalidated); *Passions Video, Inc. v. Nixon*, 458 F.3d 887 (8th Cir. 2006) (Missouri statute restricting advertisements of sexually explicit businesses invalidated); *Int'l Dairy Foods Assoc. v. Amestoy*, 92 F.3d 67 (2d Cir. 1996) (Vermont law requiring disclosure on label of dairy products containing milk from cows treated with bovine growth hormones invalidated); *New York State Ass'n of Realtors, Inc. v. Shaffer*, 27 F.3d 834 (2d Cir. 1994) (invalidating New York law authorizing the Secretary of State to declare "non solicitation" zones for real estate brokers); *Sambo's Rest., Inc. v. City of Ann Arbor*, 663 F.2d 686 (6th Cir. 1981) (First Amendment allows corporation to break agreement with City and use name found to be deeply offensive and carry prejudicial meaning to African Americans); *John Donnelly & Sons v. Campbell*, 639 F.2d 6 (1st Cir. 1980) (invalidating Maine law restricting billboard pollution, even though law allowed (and paid for) commercial signs put up by state of uniform size at exits and visitors centers); *Washington Legal Found. v. Friedman*, 13 F. Supp. 2d 51 (D.D.C. 1998) (invalidating federal law regulating drug manufacturers' use of journal reprints and drug corporation-sponsored educational seminars to promote off-label uses for prescription drugs); *Equifax Services Inc. v. Cohen*, 420 A.2d 189 (Me. 1980) (invalidating portions of Maine credit reporting statute as First Amendment violation). Many more such cases may be found in the state and federal reports.

Since the *Citizens United* ruling, people across this country have been mobilizing in support of a constitutional amendment to reclaim our democracy. As of this writing, fifteen states have gone on record calling for an amendment. Nearly 500 similar resolutions have passed in cities and towns throughout the nation. Eleven state attorneys general have joined the call. More than 2000 business leaders are now on board. One hundred twenty-nine Representatives and Senators have endorsed the call an amendment. And, the President of the United States has said he supports an amendment.

The extraordinary response to the *Citizens United* decision reflects widespread understanding that the Supreme Court majority's radical interpretation of the First Amendment to hold that the American people and our elected representatives are powerless to regulate corporate political expenditures is fundamentally wrong as a matter of constitutional law, history, and our republican principles of self-government. The opposition to *Citizens United* and determination to overturn it cuts across all partisan lines: 82% of Independents, 68% of Republicans, and 87% of Democrats support a constitutional amendment to overturn the ruling and to make clear that corporations are not people with constitutional rights ([January 2011, Hart Research Associates survey conducted for Free Speech For People](#)).

The transpartisan appeal of this movement is further demonstrated by the growing number of Republican officials who support a constitutional amendment. [As our recent report, "Across the Aisle," documented](#), more than 100 Republican officials at the federal and state level are now on record calling for an amendment. And, as you know, last November, the voters of Colorado and Montana, by three-to-one margins, supported statewide ballot initiatives calling for an amendment.

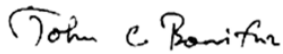
We recognize, as did James Madison, that we should only amend the U.S. Constitution on "great and extraordinary occasions." We are presented today with such an occasion.

Where such occasions arise, the American people have always used the amendment process to protect our democracy. Indeed, most of the seventeen amendments adopted since the original Bill of Rights have corrected what the American people understood were obstacles to the equal right of all people to participate in self-government on equal terms. The 13<sup>th</sup> Amendment ended slavery, the 14<sup>th</sup> guaranteed liberty, due process and equal protection of all, and the 15<sup>th</sup> guaranteed the right to vote could not be abridged on account of race. With the 17<sup>th</sup> Amendment (1913), the people took back the right to elect Senators, who previously were elected by the state legislatures. With the 19<sup>th</sup> Amendment, the people guaranteed the right of women to vote, overruling the Supreme Court's view that equal protection of all persons under the 14<sup>th</sup> amendment did not provide equal voting rights for women. The 24<sup>th</sup> Amendment was adopted in 1964 to eliminate the poll tax, which was used to block poor people, often African Americans, from voting. The 26<sup>th</sup> Amendment in 1971 ensured that the right to vote included men and women age 18 and older.

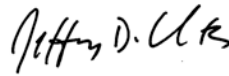
Today, we are at another crossroads, and the nation faces one of its gravest tests. Your introduction of your constitutional amendment bill is critical to the defense of our republican democracy. Combined with Senator Tom Udall's amendment bill to restore the authority of Congress and the States to regulate campaign finance and with Congressman Jim McGovern's companion amendment bills in the U.S. House of Representatives, your amendment bill will help preserve our Republic.

Thank you for your outstanding leadership. We look forward to working with you on this fundamental question of our time.

Sincerely,



John C. Bonifaz  
Co-Founder and Executive Director



Jeffrey D. Clements  
Co-Founder and President