



Resolution on Corporate Constitutional Rights

Proposed and to be presented at 2022 NLG virtual convention by
Greg Coleridge Co-Director, Move to Amend, greg@movetoamend.org, 216-255-2184

WHEREAS:

1. Democracy is founded on the premise that the People are the source of all power;
2. ‘We the People’ created corporations as tools to serve us, not themselves. As sovereigns we can regulate and restrict corporations as we see fit. The Supreme Court’s invention of constitutional rights for corporations has turned this fundamental principle on its head;
3. For the first 100 plus years of our history, corporations were strictly controlled and had no constitutional rights. Corporations could not even exist unless state legislation—called charters—created them;
4. Statutes created corporations to give them the powers needed to conduct business for the people’s benefit. Logic dictates that corporations have only those rights granted them by statute. Statutes cannot create constitutional rights;
5. Corporations do not need constitutional rights to conduct business. Logically, an entity created to serve people should not have the same constitutional rights as those people it is supposed to serve;
6. Corporations are not mentioned in the Constitution. So the framers did not think they should have constitutional rights. But, starting with the 1819 Dartmouth case, SCOTUS inserted corporations into the Constitution and progressively invented constitutional rights for corporations, giving corporations most of the same constitutional rights as natural persons like you and me;
7. The corporate constitutional rights doctrine created by SCOTUS is not supported by logic, history or law. SCOTUS has never explained why artificial entities like corporations should have the same constitutional rights as natural persons when corporations do not need constitutional rights to do business and have special advantages that individual persons do not have, e.g. perpetual life and limited liability;
8. The Supreme Court's corporate constitutional rights jurisprudence has used ever shifting rhetorical devices and rationales for reaching the desired result in any given case. This incoherent and undemocratic body of law exists in defiance of the purpose and plain meaning of the constitutional text. For example SCOTUS “found” corporate constitutional rights under the 14th Amendment, created to ensure the rights of former slaves, the text of which applies only to “All persons born or naturalized in the United States” which corporations cannot be;
9. The SCOTUS-created corporate constitutional rights doctrine fueled corporate power to the point that the modern multinational corporation is the most dominant institution on earth, dwarfing many countries in wealth, power and influence;

10. This court-made corporate constitutional rights doctrine has allowed corporations to abuse and harm the human beings they are supposed to serve. In addition to using their so-called free speech rights under the First Amendment to buy politicians, corporations have used other corporate constitutional rights such as the Fourth, Fifth and Fourteenth Amendments to undemocratically impose pollution, water contamination, environmental destruction, harm to workers and other assaults on unwilling local communities and individuals in derogation of local control, the police power, and democracy itself;

11. A series of Supreme Court decisions created the same political free speech rights for corporations under the First Amendment as originally belonged only to natural persons. This allows corporations to spend enormous amounts of corporate money to influence politics, policy and who gets elected to public office. This tsunami of unregulated, undisclosed money drowns out the people's voice which is neither heard nor heeded.*;

*[https://scholar.princeton.edu/sites/default/files/mgilens/files/gilens_and_page_2014_-testing_theories_of_american_politics.doc.pdf] See also, professors Joshua Kalla and Ethan Porter, "Politicians Don't Actually Care What Voters Want." A two year 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." <https://osf.io/c2sp6/>. For a brief description of this study, see "Politicians Don't Care What you Think", N.Y. Times, OP-ED, A-23, July 11, 2019.

12. "A majority of people want reforms such as lower drug prices, greater affordable health care, climate change reduction, and infrastructure repair." But what the people want rarely gets enacted because Congress relies on large donor and corporate campaign contributions which makes Congress beholden to their wealthy donors instead of the people they should represent. And, even if these reforms were enacted, they could be toppled if SCOTUS found they violated some corporation's constitutional rights;

13. SCOTUS has used two contradictory analogies to give free speech rights to corporations.

One, the association or partnership analogy imagines that the corporation is a mere aggregation of its shareholder members and merely speaks for them. But shareholders do not own the corporation, they own stock in it. Also, many shareholders are corporations themselves. This theory is flawed on several grounds. Because corporate law imposes a fiduciary duty on corporate officers to maximize profits, its officials cannot make decisions that represent the values of any human being. Human shareholders have values and interests other than maximizing the corporation's profits. Also, the corporation's wealth derives from many other stakeholders, e.g., its employees and consumers, with divergent interests of their own. The corporation misappropriates the wealth contributed by these stakeholders when it spends corporate money to influence politics and policy. The association theory is also inconsistent with limited liability.

The other, entity theory, is that the corporation is an independent entity, separate from its human members. As such, it is an independent speaker with its own views and that denying or restricting its voice violates the First Amendment because the public is denied the ability to hear what the corporation has to say. (Note: it turns out that the human public only gets to hear what the corporations want them to hear while, because of the right not to speak, the public does not get to hear what they want to hear—e.g., what's in the products we use. This theory is also flawed because corporations cannot exist without being created by a government which lacks the power to create CRs.

SCOTUS has used both of these contradictory theories in the same case—e.g., Citizens United;

14. The [NLG adopted a resolution](#) on October 14, 1998, prior to its annual convention in Detroit with the theme of “Fighting Corporate Power,” that stated, in part, “Giant corporations increasingly govern our lives and communities and define our work and our culture, eroding democratic values and pillaging the environment;” “The National Lawyers Guild, from its founding in 1937 to the present, has a radical heritage of organizing and providing legal support to virtually every struggle in the United States for economic, social, and political justice;” and “There exists a growing mass people’s movement that contests the authority of corporations to govern and works toward restoring sovereignty in the hands of the people, to put human beings back in charge as they should be in a democratic polity.”

15. Giant corporations are much more powerful politically and economically today that they were in 1998, causing massive harms to people, communities and the natural world in the U.S. and globally, as well as profoundly threatening to end whatever degree of “democracy” ever existed;

16. A growing effort to “contest the authority of corporations to govern” is represented by [Move to Amend](#), endorsed by over [600](#) organizations, including the [NLG](#) and [700](#) communities that have passed municipal resolutions and ballot initiatives, calling for the abolition of all corporate constitutional rights and money spent in elections defined as FirstAmendment-protected “free speech,” as codified in the [We the People Amendment, \(HJR48\)](#), cosponsored currently by 93 members of the U.S. House of Representatives.

THEREFORE, BE IT RESOLVED that the National Lawyers Guild:

1. Reaffirm the principle, as stated in its 1998 Resolution, that “only natural persons are vested with constitutional rights,” and, thus, endorse the We the People Amendment (HJR48);
2. Will implement this resolution by the committees and individuals listed in support below, and in coordination with the NLG National Office. The individuals listed below will contact and coordinate with committees, chapters, and other NLG entities to inform them and assist them in educating their members and the public about this issue."

Supportive committees and individuals: