



Free Speech for People (<http://www.freespeechforpeople.org>) is a campaign of public interest and business leaders, law professors, elected representatives and thousands and thousands of people across the nation, working to overrule the Court's fabrication of "corporate rights" in our First Amendment by amending the Constitution to protect democracy and restore the First Amendment for people. Amendment bills, including from Congresswoman Donna Edwards, are beginning to be introduced in Congress, as it becomes increasingly clear that the American people reject the dark vision of our democracy presented in *Citizens United*.

*What is the problem?*

As President Obama has said, *Citizens United* "strikes at our democracy itself."

The 5-4 decision in *Citizens United* ruled that the American people are powerless to stop corporations from using corporate funds to influence state and federal elections. Equating, without explanation, corporations and human beings, the Court held that the restrictions on corporate expenditures in elections contained in the federal Bipartisan Campaign Reform Act violated First Amendment protections of free speech. And by overruling *Austin v. Michigan Chamber of Commerce*, the Court essentially invalidated restrictions on corporate political expenditures in 24 states. As Justice Stevens and the dissenters state, "today's holding is the radical departure from what has been settled First Amendment law . . . Unlike our colleagues [on the Court], [the Framers of our Constitution] had little trouble distinguishing corporations from human beings."

The implications for how elections will be conducted now are staggering. If we take only the profit of the 100 largest corporations alone, those corporations would need to spend **just 2 percent of their \$605 billion in profit** to make political expenditures that would **double** the current combined spending in all federal elections.

This result falls on top of a democracy already near the breaking point due to the dominance of corporate interest money. Corporations already spend vast sums of corporate money to dominate political debate and outcomes. As a result, Americans already are deeply estranged from their government. According to a 2007 Pew Research Center study, barely a third (34%) agree with the statement, "most elected officials care what people like me think," a 10-point drop since 2002.<sup>1</sup> That 34% undoubtedly has shrunk further in the past year. In *Citizens United*, the Supreme Court has confirmed that when it comes to politics and self-government, people may as well stay on the sidelines.

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<sup>1</sup> Pew Research Center for the People and the Press



In effect, the Court has taken from the American people the fundamental decision about who participates in self-government by “we the people” and instructed that Americans must live with political dominance by corporations. We disagree.

*What can we do?* We can do what Americans have always done to make our democracy and republic work. We must work in the way our founders intended and our Constitution provides: Adopt and ratify the 28<sup>th</sup> Amendment to the Constitution to restore free speech for people and protect American democracy.

*What will the Amendment say?* There are various approaches to securing free speech for people rather than corporate rights to control our elections, and several possible versions of a 28<sup>th</sup> Amendment are being proposed. Here is one example:

Section 1. The sovereign right of the people to govern being essential to a free democracy, the First Amendment shall not be construed to limit the authority of Congress and the States to define, regulate, and restrict the spending and other activity of any corporation, limited liability entity, or other corporate entity created by state or federal law or the law of another nation.

Section 2. Nothing contained in this Article shall be construed to abridge the freedom of the press.

*Is 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 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 that the right to vote could not be abridged on account of race. Adopting the 16<sup>th</sup> Amendment, the people overruled the Supreme Court’s decision barring a federal income tax. With the 17<sup>th</sup> Amendment (1913), the people insisted upon 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 mean all persons but only men. 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, 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 Free Speech for People 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.

*Can Congress overrule the Citizens United problem without an amendment bill?*

No. Short of disregarding the Supreme Court’s decision and inviting an even more grave Constitutional crisis, Congress cannot overrule *Citizens United*. That is why the Constitutional amendment process has been necessary to correct egregiously wrong decisions of the Supreme Court, from deciding that African Americans, “whether emancipated or not,” are not citizens and “had no rights which the white man is bound to respect” (*Dred Scott v. Sandford*, 60 U.S. 393 (1856)) to deciding that even if women were citizens under the 14<sup>th</sup> Amendment, they had no right to vote because the Constitution, according to the Court, did not guarantee the right to vote as among the fundamental rights, privileges or immunities of citizenship (*Minor v. Happersett*, 88 U.S. 162 (1874)).

*Does working for a Constitutional amendment distract from other good approaches?*

No. The Free Speech for People campaign complements rather than distracts from other necessary steps, such as public campaign financing, disclosure and shareholder approval, and others. These are critical short-term steps but in the long-term Americans must re-assert control of our political destiny and ensure that our First Amendment not be twisted to confuse artificial economic creations of state law with people who have inalienable rights.

*How is the Constitution 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.

The Free Speech for People Campaign seeks Congressional and State legislature approval of the amendment to correct the corporate rights doctrine.

*Will the Amendment limit speech?*

No. The Free Speech for People Amendment will restore the First Amendment and 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 the people's laws regulating corporate conduct. 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.

There is nothing unusual about rules preventing government-created entities such as corporations from being misused for political purposes. Mayors and city councilors cannot use their municipal corporations to spend municipal funds to support candidates, oppose perceived enemies, or influence ballot questions.<sup>2</sup> Federal law prevents government employees from using their position to engage in political activity.<sup>3</sup> Our Armed Forces accept the obligations of political neutrality without complaint.<sup>4</sup> Corporate capacity, as with other government-created capacities, may carry statutory restrictions on political activity.

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<sup>2</sup> See *Creek v. Village of Westhaven*, 80 F.3d 186, 192-93 (7th Cir. 1996); *Anderson v. City of Boston*, 380 N.E.2d 628 (Mass. 1978).

<sup>3</sup> 5 U.S.C. §§ 7321-7326; 5 U.S.C. §§ 1501-1508.

<sup>4</sup> See Dep't of Defense Directive 1344.10, *Political Activities By Members of the Armed Forces*, Feb. 19, 2008, [www.dtic.mil/whs/directives/corres/pdf/134410p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/134410p.pdf), accessed 2009-7-24.



*What about the press?*

The Free Speech for People 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 an Amendment prevent people from joining together into political parties, citizens’ organizations, associations, unions or other groups to participate in elections and public debate?*

No. A Free Speech for People Amendment would have no application to voluntary associations and does not change constitutionally protected freedom of assembly or association. People are always free to associate with others, pool their resources, and act together to promote their speech or engage in political activity.

An 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. An Amendment does not apply to groups that are not corporate entities. In fact, an Amendment does not prevent Congress or the States from *allowing* corporate entities to engage in political activity or “speech” if that’s what the legislators elected by majority of the people decide to do. An Amendment simply overrules the idea that five Supreme Court Justices can prevent the people and our elected representatives from making their own choices about what level of political activity to allow for corporations.