By What Authority

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# "Are Not Corporations People, Too?" … Encounters with Corporate Liberals

***by James Price***

As advocates pursuing the passage of the Move to Amend "We the People" 28th Amendment, we are periodically confronted by various critics who appear uncomfortable about a number of consequences which they believe would result from its passage. Some see it as an unnecessary overreach, because, they assert, the First Amendment political speech problem caused by allowing unlimited corporate contributions for or against political candidates in Federal elections can be solved by simply overthrowing the *Citizens United v. Federal Election Commission, (2010)* decision. They see no additional measures being necessary to address other abuses of political speech by corporations or wealthy individuals or to limit other constitutional rights and powers bestowed on corporations by the Supreme Court for more than a century. Others feel that any effort to pass a constitutional amendment is unachievable on its face. Still others would like to see corporations have more constitutional rights, not be stripped of them.

People taking such positions frequently appear to be more concerned about protecting the claimed constitutional "rights" of corporations than the rights of human beings. Some are self-described "liberals". They might be better described as corporate liberals, and some are found in the Democratic Party establishment.

Corporate liberals have a hard time accepting the more progressive, small "d" democratic, populist approaches espoused by the Bernie Sanders campaign, the Green Party, Move to Amend, and POCLAD. They have long been focused on working closely with corporate lobbyists and wealthy elites on fundraising and maintaining their positions of control within the Democratic Party establishment. The result is that the national leadership of the Democratic Party has over time become ever more beholden to Wall Street, corporations, and extremely wealthy corporate liberals.

What follows are several of the more common arguments used by corporate liberals against the proposed "We the People" Amendment and suggested responses to them. It is hoped that this synopsis will be helpful to "We the People" Amendment advocates when encountering these critics. Examples of such arguments are described in the following paragraphs.

1. **The goal of the "We the People" Amendment should only be to reverse the result of the U.S. Supreme Court's decision in *Citizens United v Federal Election Commission (2010)*.**

The "We the People" Amendment calls for an end to the U.S. Supreme Court's imposed doctrines espousing "corporate constitutional rights" (*Santa Clara County v Southern Pacific RR, 1886*) and "money equals speech" (*Buckley v Valeo, 1976*). This would not only result in the overthrow of the *Citizens United* decision, it would also eliminate the two earlier Supreme Court decisions on which the corporate form, along with its wealthy owners and managers, maintain their legal advantage over natural persons in governing and economic affairs of the United States.

2. **The "We the People" Amendment is extremely unlikely to pass the onerous amendment process**.

The Constitutional amendments leading to voting rights for males of all races, women's suffrage, the direct election of U.S. Senators,

voting rights for 18-year-olds, and elimination of the poll tax were initially described by some as "ill-conceived and extremely unlikely to pass the onerous amendment process". With the election of Donald Trump and his ability to stack the U.S. Supreme Court, it is less likely that *Citizens United* will be overturned by the Court. A constitutional amendment that goes to the roots of our illegitimate corporate governance by denying corporations all constitutional rights and getting rid of the equivalency of money with speech now appears the best way to put We the People in charge.

**3. The "We the People" Amendment would allow governments to regulate corporations without any constitutional restrictions.**

The current problem is, in fact, just the reverse. Governments are always accountable to constitutional limitations in carrying out their regulatory responsibilities. The reality today is that corporations are more aggressively than ever claiming "corporate constitutional rights" to oppose efforts by governments to regulate their actions. A recent example is the case of the Hobby Lobby corporation claiming First Amendment freedom of religion rights in *Burwell v. Hobby Lobby, (2014)*.

**4. The "We the People" Amendment would provide that spending money is not speech for purposes of First Amendment protections.**

The proposed "We the People" Amendment actually states that, "The judiciary shall not construe that spending of money to influence elections to be speech under the First Amendment". Governments could still allow spending on elections and set limits to that spending, as defined by citizens directly via initiatives and indirectly via pressure on elected officials. This is based on the principle that the votes of the masses of people should not be overwhelmed by the votes in dollars by a small minority of extremely wealthy people or by their wealth-enhancing corporations. Since the *Citizens United* and *McCutcheon v Federal Election Commission (2014)* decisions, corporations can spend unlimited amounts of money to influence elections, though still not directly to candidates, and individuals can spend enormous amounts as allowed within the higher ceilings established by the U.S. Supreme Court. Given the disparities in income and wealth that exist in the United States today, it is doubtful that Congressional legislation placing limits on corporate or individual campaign contributions would substantially change the current situation which strongly favors money over people.

**5. State governments could seize corporate assets without compensation and without worrying about the "takings" clause of the Constitution**.

Let us look at the current situation in the United States. Local governments are always accountable to the Constitution in carrying out their regulatory responsibilities. The reality is that governments have become timid in exercising their regulatory authority because of corporations' aggressive use of the "takings" clause of the 5th Amendment. This apprehension to enact regulations protecting the health and safety of workers, the public, and the natural environment has been enhanced through the aggressive use of lawsuits in which corporations claim "takings" damages for the loss of future profits. These corporate lawsuits are supported by decision making structures and powers given to corporations through such "trade" deals as the proposed Transatlantic Trade and Investment Partnership (TTIP). They intimidate governments by threatening the extraction of high payouts, even potential bankruptcy. Moreover, individual owners and investors of corporations would still retain their individual constitutional rights to prevent governmental seizure of corporate assets without compensation.

**6. Corporations should be granted more constitutional rights, not have them stripped away via the Move to Amend "We the People" 28th Amendment.**

This argument has been made by certain law professors who believe that the problems with corporate constitutional rights can be corrected by assuring more of them rather than stripping corporations of them. This thesis is based on the idea that withdrawing corporate constitutional rights will result in more abuses of power by governments. The reality is that corporations are increasingly using their wealth and power coupled with claims of corporate constitutional rights to expand their governance of our society and control of the United States economy. Rather than expanding corporate constitutional rights, state legislatures can actively use their corporate chartering processes to establish the *parameters* within which

corporations may operate and to set the *limits* to those *privileges*.

Legislatively defined *privileges* or *statutory rights* are different from *constitutional rights* , which are inalienable and intended for all living, breathing, *natural persons* in the United States. *Natural persons* are also distinct from *artificial*, humanly defined and created, *legal entities*, called corporations. Legislatures can grant statutory rights to corporations in order that they may carry out the duties of their charter, rights that can also be withdrawn or reworked if found to not meet the needs of the corporation or the protection and authority of a governing citizenry. With that said, corporations should not be entitled to exercise the constitutional rights of human beings.

It has also been asserted that increasing corporate constitutional rights is essential for furthering a growing capitalist economy. Remember that the United States economy was sustained for a century before the concept of corporate constitutional rights was imposed by the U.S. Supreme Court in the *Santa Clara* case. It is also unacceptable at this time in our history that we persist in an exponentially growing capitalist economy characterized by the competitive production of endless more and corporations claiming ever more constitutional rights. This is not a sustainable or desirable framework from either an ecological or an economic standpoint.

It is hoped that the readers of this article find this information helpful in addressing criticisms from corporate liberals as they arise when discussing the Move to Amend "We the People" 28th Amendment that would abolish Supreme Court imposed doctrines of "corporate personhood" and "money is speech".

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***By What Authority*** (ISSN: 524-1106) is published by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation and plunder the earth. ***By What Authority*** reflects an unabashed assertion of the right of the sovereign people to govern themselves.

POCLAD is a group of 7 people instigating democratic conversations and actions that contest the authority of corporations to govern. Our analysis evolves through historical and legal research, writing, public speaking and working with organizations to develop new strategies that assert people's rights over property interests.

***BWA*** is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions and suggestions.

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