

Why Americans Should Support the People's Rights Amendment

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The People's Rights Amendment recently proposed by Congressman Jim McGovern and backed by Free Speech for People and other groups would reverse the Supreme Court's decision in *Citizens United*, reinstate the traditional understanding that corporations are not people for purposes of the Constitution, and restore the power of Congress and the states to regulate corporate spending in elections. Professor Kent Greenfield, in his Huffington Post piece opposes the People's Rights Amendment as unnecessary because, he says, "corporate personhood" is a "red herring" that plays no role in constitutional analysis or in the Court's decision in *Citizens United*. At the same time Greenfield claims that the People's Rights Amendment is "dangerous" and that by eliminating corporate constitutional rights, it would somehow undermine the constitutional rights of real persons acting in groups or in the setting of a non-profit or commercial corporation. Aside from the internal contradiction in Greenfield's position (if corporate personhood is a "red herring," how can its elimination be so dangerous?), his argument mischaracterizes both the reasoning of *Citizens United* and the purpose and effect of the People's Rights Amendment.

Corporate Personhood Is at the Core of the *Citizens United* Ruling

Greenfield insists that corporate "personhood" is a "red herring" that "is neither here nor there in constitutional analysis." But in support of that assertion, Greenfield refers not to the constitutional analysis that was actually employed by the Supreme Court majority in *Citizens United*, but, instead to Justice Stevens' dissent. Greenfield says that under Justice Stevens' approach, "the outcome in constitutional cases does not depend on personhood but on whether protecting artificial entities benefits real people." That may be, but, unfortunately, Justice Stevens' approach was emphatically rejected by the majority in *Citizens United*, for whom the corporate status as human "speaker" was the beginning and end of the case. For the majority, whether striking down a campaign finance regulation "benefited real people" was beside the point because any distinction that treated the corporate entity differently than real people would improperly discriminate against the corporation as "a disadvantaged person or class." Once the majority adopted the fiction that a corporation is a "speaker" -- constitutionally equivalent to a human "speaker" -- no analysis of the effect of the regulation on real people was necessary, because, the Court reasoned, the government may not "impose restrictions on certain disfavored speakers." It is no surprise then that Justice Stevens devoted much of his dissent to challenging the "majority's unwillingness to distinguish between corporations and humans," and to reminding us that corporations "are not themselves members of 'We the People' by whom and for whom our Constitution was established."

The People's Rights Amendment Specifically Protects the Constitutional Rights of Groups of Natural Persons

Relying on the erroneous assumption that the People's Rights Amendment would only protect the constitutional rights of natural persons *acting in solitude*, Greenfield insists that the Amendment would "cut off rights to groups," eliminate "freedom of association," and eliminate freedom of the press, save for lonely reporters distributing "homemade handbills" or orating "from a soapbox." Greenfield misreads the People's Rights Amendment. The Amendment specifically states that the Constitution is intended to protect the rights of "natural persons" - plural; it does not distinguish between an individual "natural person" and groups of "natural persons" and it expressly states that it shall not 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..." All that the People's Rights Amendment does not protect are contrived constitutional rights of artificial government-created entities: "corporations, limited liability companies, and other corporate entities, created by the laws of any state, the United States, or any foreign state."

The Elimination of Constitutional Corporate Personhood *Does Not* Threaten the Constitutional Rights of Real Persons

Building on his false premise that the People's Rights Amendment does not protect persons acting in concert or in institutional settings, Greenfield imagines a parade of horrors that he says the

Amendment would permit. Contrary to Greenfield's reasoning, not one of the constitutional violations he cites would be permitted under the People's Rights Amendment and each could and would be successfully challenged by natural persons. A government compelled prayer in university classes or a government ban on class subject matters could be successfully challenged by faculty and students; the ban on speech critical of the president on The Huffington Post could be successfully challenged by the author of the piece or any other real person seeking to post the piece, as well as by the Huffington Post itself under the free press clause; the seizure of Google servers containing confidential personal information could be challenged by the persons whose confidential information is seized; and so on.

Further, while the People's Rights Amendment would prohibit courts from striking down laws based solely on the purported constitutional rights of artificial entities (as the Court did in *Citizens United*), it would not prohibit corporations and other entities from asserting the constitutional rights of natural persons, provided that they can demonstrate standing to do so. This distinction between granting a corporate entity standing to assert constitutional rights of real persons whose interests it represents and recognizing legal rights of the entity itself is not new. For example, in 1963, in *NAACP v. Button*, a case referenced by Greenfield, the Court recognized that the NAACP had standing to assert the constitutional rights of its members and added that, as a non-profit corporation, it could also assert those rights on its own behalf. Under the People's Rights Amendment, the Court would rely exclusively on the former, but the result would be the same. Indeed, several years before *Button*, in *NAACP v. Alabama*, the Court rejected the suggestion that the NAACP could assert constitutional rights independently of its members, but nonetheless concluded that the NAACP had standing to assert the constitutional rights of its members to strike down the state's effort to compel disclosure of its membership list. Similarly, in *Planned Parenthood v. Casey*, the Court struck down an abortion restriction, not because Planned Parenthood has a constitutional right to provide abortions, as Greenfield suggests, but because it had standing to assert the constitutional rights of its patients.

In short, the elimination of corporate constitutional rights will not change the results in cases in which the constitutional rights of natural persons -- individually or in groups or associations -- are infringed. But it will change the results in many of the increasingly common situations in which purported corporate constitutional rights are invoked to strike down laws that regulate economic activity without infringing the constitutional rights of any natural persons, such as restrictions on corporate funding of electioneering; prohibitions on marketing of cigarettes to children; regulations of off-label drug marketing; and disclosure requirements concerning the nature of the products marketed and sold by corporations.

Constitutional Corporate Personhood Does Threaten and Undermine the Constitutional Rights of Real Persons

Greenfield's view that protecting the rights of natural persons requires us to recognize independent constitutional rights of artificial persons is not only mistaken, but ultimately serves to dilute the rights of real persons. It does so by thwarting efforts by the people, through their elected representatives, to regulate corporate economic activity in order to protect the rights and interests of real people, not just in the area of campaign finance, but with respect to the environment, consumer protection, health and safety of workers, and the integrity of our food supply.

It also does so by delegating to corporations the protection of individual constitutional rights. For example, Greenfield's assertion that in the absence of corporate constitutional rights of Google a government seizure of personal information on Google's servers would be perfectly valid illustrates how thoroughly the corporate personhood doctrine can be used to turn constitutional rights on their head, enshrining the constitutional rights of corporate entities and placing the rights of real people at the mercy of those corporations. In Greenfield's corporate rights world, your private information is protected from government intrusion only until Google (or Amazon, Verizon, AT&T, Apple, CVS, or any number of other corporate entities who maintain private information about all of us) decides to turn it over to the government. To suggest that we can and should rely on for-profit corporations to protect our constitutional rights misconstrues the nature and role of corporations as much as it misconstrues the nature and purpose of constitutional rights. To cite just one example, the willingness of the telecommunications corporations to blatantly violate federal wiretapping laws at the request of the Bush administration (and in order to participate in highly lucrative government contracts) demonstrates that allowing constitutional rights of real people to become dependent on supposed constitutional rights of corporate entities is ultimately a vision in which only the corporations have constitutional rights.