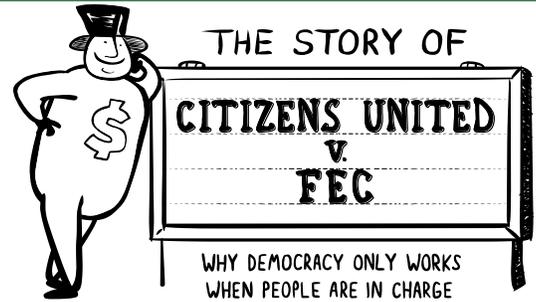
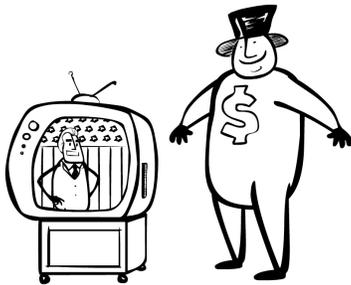

Annotated Script



By Annie Leonard

Aren't you tired of this stuff? Why is it that every election season, it becomes impossible to hear the facts over all these misleading ads? And if it seems the problem is only getting worse, that's because it is.¹ We can thank the Supreme Court for that.

In 2010, they decided that it'd be just fine for corporations to spend as much money as they want telling us who to vote for.²



Wait, why are corporations telling us who to vote for?

Let's get something straight. This is a democracy, you know rule by the people?

I'm a person. You're a person. And Chevron? Not a person.

So shouldn't elections be all about what people want? Good Jobs. Safe products. Healthcare. Responsible Government. Clean air and water.

It turns out that the vast majority of Americans want to see a lot more done on all of these things.³

But what people want will take a backseat as long as corporations can spend millions getting lawmakers elected.

Oil companies⁴ have gotten politicians to block laws protecting our climate. Manufacturers have pushed through trade agreements that gut product safety and help ship jobs overseas⁵. Insurance companies have been the first ones consulted on health reform⁶ and giant corporations have gotten bail-outs and subsidies⁷.

Maybe that's why all kinds of people - Republicans, Democrats, independents -- are totally frustrated with our government. It's easy to get angry. But it's time we got smart and realized that the heart of our problem is not that we have bad lawmakers. We have a democracy in crisis.

85% of Americans feel that corporations have too much power in our democracy and people have too little⁸. 85 percent! Hey, that's a majority.

So let's get together and take our democracy back from corporations. It's the first and most important step in making real progress on all the issues people care most about.

So how did "we the people" lose control of our democracy to begin with? Let's go back a few centuries.

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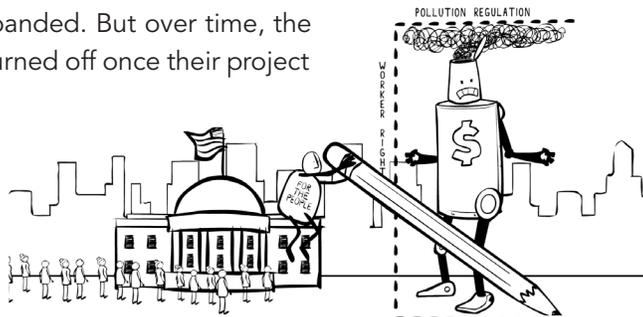
Back then there were just people. Some of them owned businesses. Some of them worked for businesses. Still, there were just people.

Then people invented something entirely new -- the corporation⁹. These legal entities exist independently of the people who own them. If a corporation does something that gets it into trouble, the owners can say, don't blame me, blame the corporation. I'm just a shareholder!¹⁰

When the United States came into existence, corporations were easier to keep in check. Back then, the government would grant them charters for a specific short-term project, like building a bridge or a railroad.¹¹

Once they fulfilled their purpose, they were disbanded. But over time, the changed and corporations no longer had to be turned off once their project complete. They began to live on indefinitely, with a much more general purpose, profit.¹² And that's how the modern corporation was born.

Today's corporations have evolved to have something very dangerous in their programming. Unlike people, who are driven by all kinds of motivations -- doing the right thing, love for family, their country, the planet -- publicly traded corporations are now required, by law and the markets, to pursue one single motivation above all others. Maximize value for shareholders -- make as much money as possible.



That's it.

No, really, that's what the law and the markets demand.

Imagine a friend saying, "The only thing I really care about is money." Not someone you'd want to leave your kids with, or your democracy for that matter.

Yes, it is people who run these corporations but their human motivations come second. If they prioritize anything at all over maximizing profits, they're outta there. Can corporate leaders do good things like give to charity or try to be more green? Sure. But not if it conflicts with maximum profits¹³.

And since their humble beginnings, corporations have grown huge.

53 of the 100 biggest economies on earth are now corporations¹⁴.

So corporations have a single-minded profit motive. They're humongous. And their owners can easily dodge the blame for any harm they cause. That makes them tricky to share a country with. If we want them to serve us and not the other way around, they need some basic ground rules.

And that's where the government comes in, setting rules to keep things fair and safe and to protect

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society from corporations run amok.

Now if their main objective is to maximize profit, do you think corporations are content to follow rules¹⁵ that keep them in check? No, of course not. They want to write those rules.

But who is supposed to write the rules in a democracy? People.

That's why one of the corporations' key strategies for sneaking into our democracy is saying they should have the same First Amendment rights as real, live people¹⁶. And that's exactly how they won that 2010 Supreme Court case known as Citizens United vs. FEC.¹⁷

In that case, five members of the Supreme Court decided that it's unconstitutional to put any limits on how much money corporations can spend influencing elections. Why? They said these limits violate the first amendment guaranteeing free speech.¹⁸

Obviously our founding fathers who wrote the first amendment were trying to protect the free speech of people.¹⁹ But this decision rides on the crazy argument that corporations should be treated the same as people and should get the same rights real people get!²⁰

This means corporations can spend as much as they want, whenever they want to intimidate or crush candidates running on a platform against their interests and support candidates who will do what they ask. Great news for corporations wanting to handpick the lawmakers whose job it is to keep them in check.

Now, I'm all for free speech! If every shareholder and employee at Exxon wants to personally support some oil lobbyist running for senate, it's their right. There are millions more people who will support a different candidate. That's democracy in action!

But now Exxon or any other corporation can decide to spend unlimited dollars from its huge corporate coffers to influence an election, without even consulting its shareholders.

This is a big deal. If the top 100 corporations decided to throw in just 1% of their profits, they could outspend every candidate for President, House and Senate combined!²¹ Good luck having your free speech heard over that!

So did opening the floodgates on this money actually cause a flood? Sure did.

In 2010, the kind of "independent" groups that corporations are now allowed to support spent \$300 million.²² That's more than every midterm election since 1990 combined!²³

So corporations are drowning out our voices, getting what they want and our democracy is in trouble.

But we can totally save it! People are so outraged by the Supreme Court Decision that a massive response is mobilizing. Such a huge problem requires a huge solution and we've got one, a new constitutional amendment.

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The amendment is smart and clear. It reverses this disaster to our democracy by clarifying that the first amendment isn't meant for for-profit corporations. ²⁴

I get that amending the constitution is a big, ambitious goal. But it's not impossible. Every time huge positive change has been made in this country, it's because people dreamed big, aimed high, and set ambitious goals. It's time to do that now, because the life of our democracy is on the line.

Public Financing of campaigns would be another huge step forward. ²⁵ Congress is working on a bill right now that would make it possible for candidates to get elected without corporate dollars. ²⁶

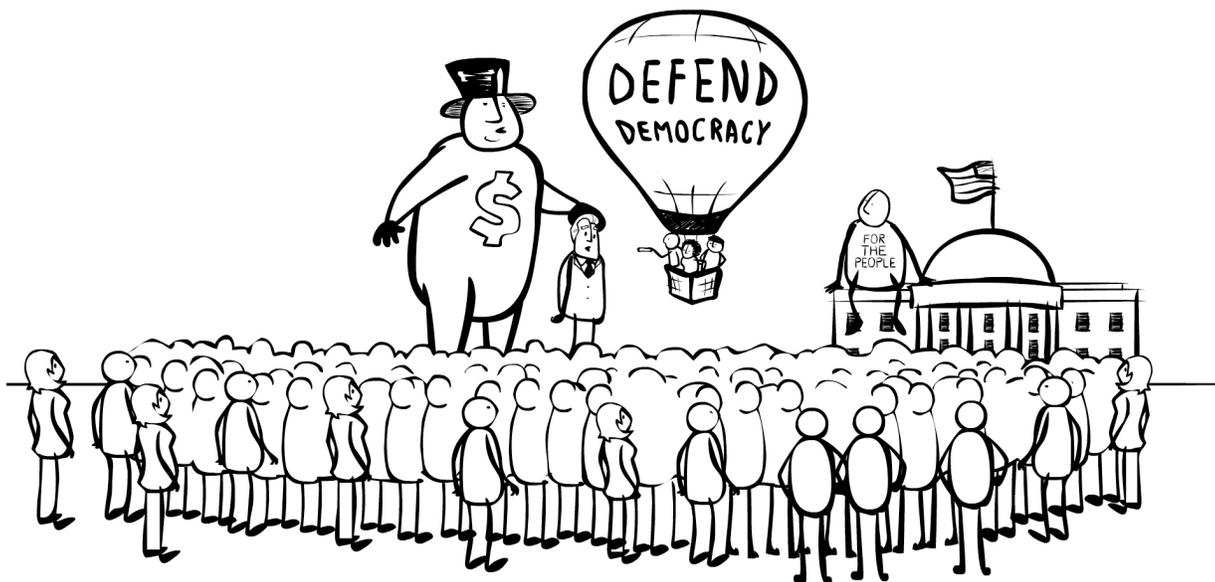
Remember, 85% of Americans think that corporations have too much influence in our democracy. That's enough to make change, if we can turn that sentiment into action.

Look, the corporations won't get out of our democracy until we, the people, get back in.

So keep fighting for renewable energy, green jobs, health care, safe products and top-notch public education. But save some energy for the battle of our lifetimes.

...A battle that can open the door to solving all of these things.

It's time to put corporations back in their place and to put people back in charge of our democracy.



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1. Bloomberg reported that Spending on advertising in U.S. Senate races between January 1 and October 2, 2010 rose to \$314 million from almost \$157.5 million during the same period in 2008, and in House races to more than \$210 million in 2010 from almost \$142 million in 2008, according to an analysis by the Wesleyan Media Project of data from Kantar Medias Campaign Media Analysis Group (<http://www.businessweek.com/news/2010-10-27/election-spending-already-a-record-might-reach-4-billion.html>). Those figures are based on a conservative methodology that likely underestimates total expenditures. As additional data on corporate spending to influence election outcomes in 2010 becomes available, we will update this reference.
2. Citizens United v. Federal Election Commission, 558 U. S. ____ (2010) (holding that "restrictions on corporate independent expenditures are therefore invalid.") <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>
3. Americans list jobs as their top policy priority.
<http://www.politicsdaily.com/2011/01/20/americans-say-economy-jobs-are-top-priorities-but-divide-on-ot/>
People are very angry about unemployment and poor functioning government.
<http://www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/mid/1508/articleId/592/ctl/ReadCustom%20Default/Default.aspx>
Voters strongly favor candidates who support clean energy.
<http://www.nrdcactionfund.org/updates/voters-overwhelmingly-support-clean-energy-candidates.html/>
Even presented with the false choice of protecting the environment or a strong economy, Americans favor the environment. This is true today, even with one in six Americans who would like a full time job not able to find one.
<http://www.gallup.com/poll/1615/Environment.aspx>
4. The Center for Public Integrity found that more than 770 companies and interest groups hired an estimated 2,340 lobbyists to influence federal policy on climate change in 2008-2009, as the issue gathered momentum and came to a vote on Capitol Hill. That's an increase of more than 300 percent in the number of lobbyists on climate change in just five years, and means that Washington can now boast more than four climate lobbyists for every member of Congress. Opponents of climate change rules vastly outnumbered proponents, and even many of the proponents favored inadequate protections for the climate. http://www.publicintegrity.org/investigations/climate_change/articles/entry/1171/

After the 2010 election, most view federal climate change legislation as off the table.

And worse, fossil-fuel-friendly members of Congress are seeking to block the Environmental Protection Agency from implementing laws like the Clean Air Act and Clean Water Act to regulate carbon polluters.
5. For a detailed and devastating account of the deceptive Big Business campaign to win passage of NAFTA (the North American Free Trade Agreement), see John MacArthur, *The Selling of Free Trade: NAFTA, Washington, and the Subversion of American Democracy*, New York: Hill & Wang, 2000.

On the political campaign to win U.S. passage of World Trade Organization agreements, see Andrew Wheat, "A Year in the Life of the GATT Business Lobby," *Multinational Monitor*, October 1994. http://www.multinationalmonitor.org/hyper/issues/1994/10/mm1094_05.html

To learn more and to track current issues related to trade agreements, see Public Citizen's Global Trade Watch: <http://www.citizen.org/trade/>
6. The Obama administration's health insurance reform was the culmination of a decades-long debate over healthcare policy. The administration included the health insurance lobby all along the process of developing its legislative proposal. By contrast, advocates of a Medicare-for-all, single payer policy were systematically excluded from negotiations. By way of example, the administration held a high-profile "summit" on health reform in March 2009. The CEO of America's Health Insurance Plans, the trade association for the health insurance industry, participated; but no advocates of single payer were invited.

<http://www.pbs.org/wgbh/pages/frontline/obamasdeal/etc/cron.html>; http://www.pbs.org/newshour/updates/health/jan-june09/healthcare_03-05.html
7. Most famously, of course, the banks obtained a giant \$700 billion bailout, approved by Congress in 2008 and 2009 (formally known as the Troubled Assets Relief Program, TARP). Wall Street and the Big Banks actually received *trillions of dollars* in a wide array of much less well understood public supports. To be clear, many of these programs were so complicated they offered gigantic public subsidies without actually costing taxpayers; many created programs were not fully implemented; and Wall Street firms and the banks have paid back most of the loan-like subsidies they received through TARP. But the subsidies were of unfathomable size, and Wall Street would have collapsed but for the government intervention. (<http://www.sig tarp.gov/987egapograbme123654/J09-3-SIGRTC.pdf>) Many more subsidies are provided to a variety of other corporations, as Ralph Nader testified to Congress a few years ago. (<http://www.nader.org/releases/63099.html>).
8. "Protecting Democracy from Unlimited Corporate Spending," a national survey conducted by Hart Research Associates for People for the American Way, June 6 – 7, 2010. (Survey report available at: <http://www.pfaw.org/sites/default/files/CitUPoll-PFAW.pdf> and more information at:

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<http://www.pfaw.org/press-releases/2010/06/new-pfaw-poll-shows-americans-want-action-to-correct-citizens-united>). Results of the survey found:

- **85% of voters say that corporations have too much influence over the political system today while 93% say that average citizens have too little influence.**
 - 95% agree that “Corporations spend money on politics mainly to buy influence in government and elect people who are favorable to their financial interests.” (74% strongly agree)
 - 85% disagree that “Corporations should be able to spend as much as they want to influence the outcome of elections because the Constitution protects freedom of speech.” (63% strongly disagree)
 - 93% agree that “There should be clear limits on how much money corporations can spend to influence the outcome of an election.” (74% strongly agree)
 - 77% think Congress should support an amendment to limit the amount U.S. corporations can spend to influence elections.
 - 74% say that they would be more likely to vote for a candidate for Congress who pledged to support a Constitutional Amendment limiting corporate spending in elections.
9. For a brief history of the rise of the corporation, see Chapter One of Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power*, New York: Free Press, 2004. The corporation traces back at least to the 1500s in the United Kingdom. (Think of the East Indian Company, for example.) In the United States, colonial legislatures had conferred charters on only seven business corporations by 1780, but roughly 300 by 1800. (Morton Horowitz, *The Transformation of American Law, 1780-1860*, Cambridge, Massachusetts: Harvard University Press, 1977, p 112.) Many more corporations were created in the first half of the 1800s; and the modern corporation emerged in the United States in the second half of the nineteenth century.
10. Perhaps the key idea underlying the corporation is the notion of “limited liability.” The corporation as an entity is responsible for what it does, and is obligated to pay for harm it causes and to pay its debts. But if it doesn’t have enough money to compensate those it has injured, or to pay its debts, victims and creditors are out of luck. A victim of corporate wrongdoing or a creditor cannot seek to recover money from the company’s shareholders, with very few exceptions. “Limited liability” means that shareholders’ liability for a corporation’s actions is limited to the amount of their investment in the company.

Limited liability only became firmly embedded in U.S. law in the second half of the nineteenth century. Joel Bakan, *The Corporation*: op. cit., p. 13.

11. David Korten, *When Corporations Rule the World*, Kumarian Press, Inc and Berrett-Koehler Publishers, Inc. 2001, pp. 60 – 68.; Lawrence Mitchell, 2007, *op. cit.*
12. U.S. corporate law shifted from requiring corporations to serve a specific purpose involving a particular line of business, to a more general purpose of rewarding shareholders with profit. (Lawrence Mitchell, *The Speculation Economy: How Finance Triumphed Over Industry*, San Francisco: Berrett-Koehler, 2007.)

Corporate law is established by states, and companies can choose which state to incorporate in. Companies do not need to be incorporate in the state where they maintain their headquarters, or where they do most business. In the early 1900s, states competed with each other to attract corporate incorporations. The states with the most management-friendly rules attracted the most incorporations; Delaware ultimately won the race, and today approximately 60 percent of all major corporations are incorporated in Delaware. Its state law provides that corporations have general power “necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.” - (Delaware Code, Title 8, Subchapter 121, <http://delcode.delaware.gov/title8/c001/sc02/index.shtml>):

Every corporation created under this chapter shall have power to:

- Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;
- Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitative or other proceeding, in its corporate name;
- Have a corporate seal, which may be altered at pleasure, and use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
- Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;
- Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;
- Adopt, amend and repeal bylaws;
- Wind up and dissolve itself in the manner provided in this chapter;

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- Conduct its business, carry on its operations and have offices and exercise its powers within or without this State;
- Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;
- Be an incorporator, promoter or manager of other corporations of any type or kind;
- Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;
- Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;
- Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of (a) a corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation, or (b) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or (c) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;
- Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;
- Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers and employees, and for any or all of the directors, officers and employees of its subsidiaries;
- Provide insurance for its benefit on the life of any of its directors, officers or employees, or on the life of any stockholder for the purpose of acquiring at such stockholder's death shares of its stock owned by such stockholder.
- Renounce, in its certificate of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or 1 or more of its officers, directors or stockholders.

13. Corporate law is somewhat murky in this area, but existing practice for publicly traded corporations is not.

In practice, the markets punish publicly traded corporations that fail to deliver strong short-term (typically quarterly) results. Companies that do not show strong short-term results see their stock prices fall. Top executives at companies with falling share prices will eventually be fired. As a result, executives pay attention to the daily ups-and-downs of their companies' share price.

Executives have some latitude and may sponsor art exhibits, waste some money on corporate jets, or may make sensible long-term investments in research and development. But, in general, the pressure to deliver short-term profits is intense; and chief executives that do not deliver strong profits will be fired.

It is often stated that corporations have a legal duty to prioritize profits. This is not precisely accurate.

By way of illustration, Delaware's corporate law establishes that companies may exist for the "purposes set forth in its certificate of incorporation." (Delaware Code, Title 8, Subchapter 121. <http://delcode.delaware.gov/title8/c001/sc02/index.shtml>). That is a general grant of authority, with no requirement to maximize profit.

Corporations generally take advantage of this kind of language to establish that their purpose is to do anything that corporations are able to do – a circular reference that means they have general purpose with no restriction save adherence to the law. By way of example, here is the corporate purpose included in the ExxonMobil charter (Exxon is chartered in New Jersey):

The purposes for which the corporation is organized are to engage in any or all activities within the purposes for which corporations now or at any time hereafter may be organized under the New Jersey Business Corporation Act and under all amendments and supplements thereto, or any revision thereof or any statute enacted to take the place thereof, including but not limited to the following:

- To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease and improve lands; to build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipelines; to erect and operate telegraph and telephone lines and lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to acquire, use, sell and grant licenses under patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of

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indebtedness of corporations, and to exercise all the privileges of ownership including voting upon the securities so held; to carry on its business and have offices and agencies therefor in all parts of the world; and to hold, purchase, mortgage and convey real estate and personal property within or without the State of New Jersey;

- To engage in any activities encompassed within this Article Third directly or through a subsidiary or subsidiaries and to take any and all acts deemed appropriate to promote the interests of such subsidiary or subsidiaries, including, without limiting the foregoing, the following: making contracts and incurring liabilities for the benefit of such subsidiary or subsidiaries; transferring or causing to be transferred to any such subsidiary or subsidiaries assets of this corporation; guaranteeing dividends on any shares of the capital stock of any such subsidiary; guaranteeing the principal and interest or either of the bonds, debentures, notes or other evidences of indebtedness issued or obligations incurred by any such subsidiary or subsidiaries; securing said bonds, debentures, notes or other evidences of indebtedness so guaranteed by mortgage of or security interest in the property of this corporation; and contracting that said bonds, debentures, notes or other evidences of indebtedness so guaranteed, whether secured or not, may be convertible into shares of this corporation upon such terms and conditions as may be approved by the board of directors
- To guarantee the bonds, debentures, notes or other evidences of indebtedness issued, or obligations incurred, by any corporation, partnership, limited partnership, joint venture or other association in which this corporation at the time such guarantee is made has a substantial interest or where such guarantee is otherwise in furtherance of the interests of this corporation; and
- To exercise as a purpose or purposes each power granted to corporations by the New Jersey Business Corporation Act or by any amendment or supplement thereto or by any statute enacted to take the place thereof, insofar as such powers authorize or may hereafter authorize corporations to engage in activities.

Exxon Mobil Corporation Certificate of Incorporation:

http://www.exxonmobil.com/corporate/investor_governance_incorporation.aspx

Publicly traded corporations, however, have obligations to their shareholders, and if a corporation wastes assets, or pursues policies that recklessly cost the company, courts will hold the corporation and/or its directors liable to shareholders.

In some cases, courts have held that companies have a duty to maximize value for shareholders in the short-term. The main instance where this applies is where a company is being sold: there, courts have held that directors must obtain the greatest revenue for shareholders.

In other cases, courts established a duty by company management to maximize value for shareholders. But they typically recognize that the duty includes both short-term profits and longer-term returns, and that this permits as a matter of law both long-term investment and charitable contributions (and other expenditures that are not directly and immediately profitable), on the grounds that charitable contributions benefit a corporate brand and the long-term interests of a corporation.

According to one of the leading legal specialists, Robert Clark:

“Perhaps surprisingly, the state business corporation statutes under which corporations are chartered generally do not say explicitly that the purpose of the business corporation is to make or maximize profits. When the statutes do refer to the corporations’ purposes, they usually mean its lines of business. The general profit-maximizing purpose has nearly always been assumed by courts and lawyers, however, and legal authorities sometimes state and use the general purpose as a basis of decision. In the famous case of *Dodge v. Ford Motor Co.*, for example, the Michigan Supreme Court viewed as “bad faith” and a breach of fiduciary duty Henry Ford’s use of his power to withhold corporate dividends, over the objection of minority shareholders, in order to be able to sell cars more cheaply and benefit the American public at the expense of corporate profits. The court told Mr. Ford that the corporation was not an eleemosynary institution and that, though his objective was laudable, he should not be generous with other people’s money. In addition, the statutory and case law formulations of the directors’ and officers’ duty of care can easily be read to imply profit maximization as the ultimate goal.”

(Robert Clark, *Corporate Law*, Boston: Little Brown & Co., 1986, p. 679.)

14. Medard Gabel, *Global Inc.: An Atlas of the Multinational Corporation*, 2003, p 2, citing data from “The World’s Largest Corporations: Fortune 2000 Global 500,” *Fortune Magazine*, July 23, 2001, pp.F1-F10 (for corporate revenue data) and *World Development Report*, 2001, Washington D.C. World Bank, 2001 (for country GDP data).

Note that other researchers place the number of corporations within the 100 largest economies at 52. (See: Sarah Anderson and John Cavanagh, *Field Guide to the Global Economy*, 2nd edition. (New Press, 2005). While we understand that comparing the economies of countries to corporations is an imperfect comparison, these figures do demonstrate the massive scale of corporate economic power today. When the economic clout of many companies is larger than entire countries, it is virtually impossible for State power to rein them in when necessary to ensure that their actions don’t harm people and the planet. If you want to read more about this issue, we recommend IPS’s Field Guide to the Global Economy (http://www.ips-dc.org/books/field_guide_to_the_global_economy_second_edition. Anderson and Cavanagh provide this “Note

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on the Numbers” in the 2nd edition of their Field Guide:

“Sales are an imperfect indicator of corporate power. Since GDP measures value-added, it would be preferable to compare country GDP to corporate value-added. However, this would require data that are not publicly available. A 2002 Belgian study attempted to estimate value-added by extrapolating from a few industrial firms (they couldn’t get any information on service firms, which have had some of the fastest growth rates).^[1] Based on their scant data, they found that of the top 100, corporations made up 37 – still a staggering reflection of corporate power.

[1] Paul De Grauwe and Filip Camerman, “How Big Are the Big Multinational Companies?” (<http://www.degrauwe.org>), January 2002.”

15. There are roughly 13,000 registered lobbyists in Washington, D.C, with nearly \$3.5 billion spent annually on lobbying. Lobbyists overwhelmingly represent corporate interests, and their job is to influence the lawmaking process. (<http://www.opensecrets.org/lobby/index.php>) In addition to officially defined lobbying, corporations spend huge amounts trying to influence public opinion and make election-related contributions to influence who gets elected.
16. Corporations did not have First Amendment speech rights until the 1970s. Then they won the right to spend money on political referenda (*First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978)). The Supreme Court also established a commercial speech right; while this was originally predicated on the right of consumers to get information, over time it morphed into an affirmative right for corporations to advertise, subject to minimal restrictions other than prohibition on misleading and deceptive advertising.

Using these newly established First Amendment speech rights, corporations have successfully challenged not only restrictions on their campaign spending, but rules restricting tobacco, alcohol and pharmaceutical advertising. An electric utility has used the First Amendment to defeat a requirement that it include in its billing envelope, at no cost to the utility, an invitation to join a consumer group. Milk producers have used the First Amendment to defeat requirements to label milk as containing hormones. For a compilation of cases, see Testimony of Jeffrey D. Clements, United States Senate Committee on the Judiciary March 10, 2010, footnote 13. (<https://salsa.democracyinaction.org/o/476/images/Free%20Speech%20for%20People%20Testimony-United%20States%20Senate%20Committee%20on%20the%20Judiciary.pdf>)

17. In this case, a 5-4 majority of the court held that corporations have a First Amendment right to spend whatever they like to influence election outcomes. (*Citizens United v. Federal Election Commission*, 558 U. S. ____ (2010)). <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

The Court overruled two existing Supreme Court decisions. In *Austin v. Michigan Chamber of Commerce*, the Court held that the government can limit for-profit corporations to the use of PACs to fund express electoral advocacy. *McConnell v. FEC* applied that principle to uphold the constitutionality of the McCain-Feingold law’s restrictions on “electioneering communications,” that is, corporate funding of election-eve broadcasts that mention candidates and convey unmistakable electoral messages. Striking down these decisions unleashes unlimited corporate and union spending in candidate campaigns, and threatens the 1907 Tillman Act, which also prohibits corporate contributions to candidates.

18. Held the Court: “prohibition on corporate independent expenditures is thus a ban on speech.” (*ibid*, page 22).
19. This point was made by Justice Stevens in his Dissent: There “is not a scintilla of evidence to support the notion that anyone believed it [the First Amendment] would preclude regulatory distinctions based on the corporate form. To the extent that the Framers’ views are discernible and relevant to the disposition of this case, they would appear to cut strongly against the majority’s position.” (*ibid.*, page 34-35) After surveying the early history of corporations, and emphasizing how they existed for limited purposes and under significant government limitations in early American history, Stevens continued, “The Framers thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. While individuals might join together to exercise their speech rights, business corporations, at least, were plainly not seen as facilitating such associational or expressive ends. Even ‘the notion that business corporations could invoke the First Amendment would probably have been quite a novelty,’ given that ‘at the time, the legitimacy of every corporate activity was thought to rest entirely in a concession of the sovereign.’” (*ibid.*, page 37).
20. After holding that prohibition on corporate independent expenditures is a ban on speech, the majority on the Court went on to offer a ringing explication of the First Amendment: “Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.” (*ibid.*, page 23). Somehow, the Court missed the fact that corporations are not people, and that it *undermines* democracy if officials are held accountable to corporations rather than actual people!
21. According to the *New York Times*, those companies’ 2008 profits were \$605 billion, which “dwarfs the \$1.5 billion that Federal Election Commission-registered political parties spent during the same election period, or the \$1.2 billion spent by federal political action committees” (<http://www.nytimes.com/2009/09/08/opinion/08tue1.html>).
22. Few corporations are interested in taking out advertisements to support or oppose candidates on their own. Rather, to avoid accountability and to take advantage of the talents of political pros, they funnel their money through “independent” organizations. These are organized under different provisions of the tax code. So-called 527 groups (named after a provision of the tax code) at least must disclose their funders. However, organizations registered as 501(c)(4) charities and 501(c)(6) trade associations under the tax code are not required to disclose funders. About half

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of the money that flowed into outside organizations in the 2010 elections went into 501(c)(4) or 501(c)(6) organizations – meaning that the sources of the funding remain secret. Most corporate money – including the funding for the U.S. Chamber of Commerce, the single largest spending outside group in the 2010 elections – was funneled secretly.

These were the top 10 spending outside groups in the 2010 elections:

Group	Amount Spent	Disclosed Funders?
U.S. Chamber of Commerce	\$31,207,114	No
American Crossroads	\$21,553,277	Yes
American Action Network Inc.	\$20,935,958	No
Crossroads Grassroots Policy Strategies	\$16,660,986	No
American Future Fund	\$9,610,700	No
Americans For Job Security (AJS)	\$9,005,422	No
SEIU COPE	\$8,340,028	Yes
American Fed. of State County And Municipal Employees	\$7,378,120	No
60 Plus Association	\$7,096,125	No
National Rifle Assoc Of America Political Victory Fund	\$6,702,664	Yes
Total	\$138,490,394	

(Source: Public Citizen calculations, from data filed with the Federal Election Commission. <http://www.citizen.org/documents/Citizens-United-20110113.pdf>)

23. Data from [opensecrets.org](http://www.opensecrets.org/outsidespending/index.php) <http://www.opensecrets.org/outsidespending/index.php>

24. The Citizens United v. Federal Election Commission decision was a radical extension of corporate power in our democracy, but corporations had far too much influence before the decision. A constitutional amendment should not only directly overturn Citizens United, it should clarify that the First Amendment is designed to protect the speech of real persons, not corporations, and that We, the People have the authority to establish controls over corporations.

A constitutional amendment establishing that for-profit corporations do not have First Amendment speech rights would achieve this objective. It would overturn the Citizens United decision. More generally, it would mean that We, the People – through Congress, state legislatures or city councils – could prohibit various kinds of corporate expenditures or regulate different kinds of corporate speech.

With the amendment, we could stop corporate spending on elections. The law overturned by Citizens United was a provision of the McCain-Feingold campaign finance reform law. McCain-Feingold was carefully crafted to respect prior Supreme Court precedent, and so permitted a great deal of corporate spending on elections. After an amendment, We, the People could directly and simply eliminate all such spending. We could prevent all independent expenditures and electioneering spending by corporations (not just that shortly before an election). We could eliminate corporate spending on state referenda. We could eliminate or regulate corporate spending on lobbying, “grassroots” lobbying, and PR campaigns around political issues, and donations to think tanks and advocacy groups. We could regulate advertising.

A constitutional amendment establishing that for-profit corporations do not have First Amendment speech rights would not limit freedom of the press for corporations (or could be drafted to exclude media corporations carrying out broadcasting or publishing). Under the amendment, Rupert Murdoch’s News Corp. would not have the right to make political donations, but Fox News would have the right to air whatever it chose. Some criticize the amendment leaving open the possibility of Fox News exerting the kind of influence it now does. Others say it does not make sense to eliminate corporate speech rights, but preserve corporate rights to freedom of press. Still others worry that in the Internet era, it is too difficult to define “media” and distinguish between freedom of speech and freedom of press. These are all reasonable concerns, but they can be addressed.

First, historically and presently, it is the case that much of the institutional press is organized under the corporate form. It is hard to see how we have a robust free press rights if they do not attach, for example, to the New York Times; so permitting corporations to maintain free press rights is a practical necessity. That Fox News maintains such rights is not really a criticism of the amendment – Fox *should* have such protections, even if it spouts offensive positions. Nor is it inconsistent for corporations to have press rights but not speech rights. Corporations presently have some constitutional protections, but not others; and the courts have long afforded corporations some First Amendment rights but not others. Last, there is no question that the rise of the Internet makes it difficult to distinguish between freedom of press and freedom of speech – but the Internet poses challenges in many areas of law, and the changing definitions caused by the Internet does not mean that distinctions can no longer be drawn.

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Some dislike the idea of distinguishing between for-profit and non-profit corporations. They argue that it is a choice to adopt the corporate form, and if an association of people chooses to accept the benefits of the corporate form (including tax benefits), the price should be that they forfeit First Amendment protections. Our view is that non-profit corporations are categorically different than for-profits. Non-profits are commonly associations of real, live human beings who come together for expressive purposes. Adoption of the corporate form is a convenience, but at root the non-profits are associations of the sort that should be protected by the First Amendment. The practical arguments in this regard are strong; since people do in fact rely on the non-profit corporate structure to carry out exactly the sort of political speech and expressive activity that the First Amendment is designed to protect.

There are other potential constitutional amendment approaches to respond to the Citizens United decision. The growing movement to overturn the decision includes many allies who urge alternative approaches to what is proposed here. There is certainly room for a debate and discussion over these alternatives – though it is much more important to focus on the common effort to build support for a constitutional amendment than highlight differences. The movement to win a constitutional amendment will unfold over time, and an engaged discussion over exactly what approach is best should be part of the movement-building process.

One approach is to focus only on corporate spending on elections. This would address the central issue raised by Citizens United, but leave a wide range of closely related issues unaddressed.

Another approach is to focus more generally on the issue of corporations being treated as persons under the constitution (often called “corporate personhood”). There is a great deal to recommend this approach. It is not only in the area of the First Amendment that the Supreme Court has extended constitutional protections to corporations; and there is widespread public disbelief that corporations are treated like people under the constitution.

While we fully agree that corporations are not people, there are difficulties with the corporate personhood approach as an amendment strategy. Many corporate rights are longer established and deeper rooted than their First Amendment claims. It would be politically challenging to argue that corporations should not be entitled to the due process protections afforded by the Fourteenth Amendment. Even harder would be to argue that they are not protected by the Fifth Amendment, which prohibits government taking of private property without just compensation.

Although other amendments and portions of the Constitution are sometimes invoked by corporations, the most serious personhood issues involve the First Amendment and corporate challenges to legislation on based on the Commerce Clause (Article I, Section 8, Clause 3. The Commerce Clause states that Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with Indian tribes. Corporations often use the Commerce Clause to stop states and localities from regulating them, on the grounds that exclusive authority to do so is vested in the federal government. The Commerce Clause cases are troubling, but these deal with the structure of government – the Commerce Clause doesn’t really confer rights on persons (or corporations). So it would be difficult via an amendment to stop corporations from invoking the Commerce Clause. Even if it were possible, it likely would be easy for corporations to have some individual (a shareholder, for example) bring the cases on their behalf. In practical terms, therefore, the main import of a corporate personhood amendment is likely to be on First Amendment issues – in which case it makes more sense to deal with the First Amendment problems directly.

25. A public financing system for elections would enable candidates to run for office without the backing of corporations and deep-pocketed donors.

In its simplest form, public financing of candidate campaigns consists of providing qualified candidates with public funds to conduct their campaigns. The idea is to provide candidates with the means necessary to pay for campaign activity while easing their fundraising frenzy and lessening the perception that politicians are granting private favors in exchange for their campaign funds.

Public financing would be a major step forward, even with the Citizens United decision still in place. It would give candidates a base of financial support, without forcing them to attract support from corporations and the ultra-wealthy.

It would not, however, be a cure for the Citizens United problem. A candidate receiving public financing might still face independent spending by corporations. Corporations could, if they choose, easily spend more in selected races than would be provided by a public financing system. And, even without such large expenditures, they would be able to tilt the playing field for their favored candidates.

26. The leading bill in Congress to advance public financing of elections is the Fair Elections Now Act (<http://www.fairelectionsnow.org>) which would permit participating candidates to raise a large number of small contributions (\$100 or less) from their communities in order to qualify for Fair Elections funding (1500 contributions, totaling \$50,000 for the House of Representatives). Qualified candidates for the House would receive \$900,000 in public funds, 60 percent of which would be for the general election. Additionally, donations of \$100 or less from in-state contributors would be matched by four dollars from the Fair Elections Fund for every dollar raised.

The Fair Elections Now Act made substantial advances in the last Congress. It was voted out of House Administration Committee, and obtaining 165 co-sponsors in the House, and 24 co-sponsors in the Senate.