



COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

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Statement on Efforts to Amend the U.S. Constitution following *Citizens United* January 2012

A great deal of activism has emerged in the wake of the U.S. Supreme Court's 2010 decision in *Citizens United v. FEC*. In that case, the Court declared that corporate First Amendment "free speech" rights were violated by federal law which limited corporate spending in elections.

Following the ruling, several groups began working to propose amendments to the U.S. Constitution to overturn *Citizens United*.

The Community Environmental Legal Defense Fund was invited to participate in those efforts based on our ongoing legislative work on corporate "rights." For nearly a decade, we have taken the lead, assisting several dozen municipal governments and communities – in Pennsylvania, Maine, Maryland, New Hampshire, New York, and Virginia – to adopt first-in-the-nation local laws which refuse to recognize the legal privileges erroneously bestowed by the courts as "corporate rights." The first such ordinances were adopted into law by two municipalities in Clarion County, Pennsylvania, in 2002 – making those communities the first in the country to elevate the rights of people above the claimed "rights" of corporations.

Municipalities are now coalescing at the grassroots level to begin to envision what state and federal constitutional changes are necessary to liberate them from corporate powers that currently prevent them from creating sustainability within their own communities.

As the Legal Defense Fund has observed the national activism following the Supreme Court's decision in *Citizens United*, we've declined to participate in proposed efforts to amend the U.S. Constitution for two main reasons.

First, we find these efforts to be far too narrow in scope. This comes with the realization that several progressive national organizations, who showed little interest in corporate "rights" prior to the *Citizens United* decision, are now leading the charge for a constitutional amendment that would "overrule" the Supreme Court's ruling in that case. In doing so, they seek to return the law to what it was before *Citizens United* was decided.

"Free speech" rights of corporations, however, were around long before the recent Supreme Court decision. *Citizens United* thus merely represented a further expansion of already existing corporate constitutional "rights," whose origins can be traced back to the early 1800's in the United States, and back even further to English common and ecclesiastical law. It is that legal legacy which has provided corporations with not only free speech "rights," but a litany of other constitutional rights and powers.

Those other “rights” exceed corporate “personhood.” They include how corporations legally wield the Constitution’s Commerce Clause to override efforts at sustainability at the municipal and state levels, how corporations are legally empowered to violate our constitutional rights at will through their immunity to rights enforcement, and how state and federal preemption are used by corporations to override community self-government.

The current organizing around *Citizens United* fails to reach those issues, and so, even if successful in its limited goal, would do little to change the relationship of corporations to the body politic.

Even worse, this organizing stymies efforts to discuss those broader issues, as any “success” on limited goals will be portrayed as the ultimate victory – as the problem having been “solved” – thus deflecting energy, resources, and concern away from the broader discussion that needs to be had. In our opinion, that broader discussion must be focused on elevating the rights of people and communities above the full litany of powers and rights claimed by corporations.

Our second main concern with the activism that’s come in response to *Citizens United* rests on our belief that the necessary structural change – the elimination of the legal authority of a corporate few to impose their will on the rest of us – will not occur through lobbying members of Congress who are either part of that corporate minority themselves, or who rely on it for power, financing, and support. Rather, armed with the understanding that structural changes to our governance system are necessary, the path to those changes does not involve lobbying Congress, but requires figuring out an organizing strategy that *forces* the necessary constitutional change to occur.

Prior peoples’ movements who were successful at forcing constitutional change – like the Abolitionists and Suffragists – did so by challenging and defying unjust laws that treated African-Americans and women as property. Their understanding was that the only force strong enough to propel the necessary structural changes within a legal system that did not recognize their existence was to defy those unjust laws on a massive scale, compelling government (and private actors) to enforce injustice openly. Enforcement of those laws then revealed the injustices that those laws legalized, creating a movement of people willing to risk their lives and livelihood to drive necessary structural changes – which eventually succeeded in transforming women and African-Americans from being treated as property under the law to being recognized as persons.

The Abolitionists defied the Fugitive Slave Law by refusing to return escaped slaves to their “owners.” Suffragists voted in elections knowing full well they would be arrested for doing so. These and so many other acts by individuals, communities, juries, and even states – refusing to obey unjust law and recognizing the need to reveal such laws for what they were – were the linchpins that built mass movements from the beginning tactics of a relative few. These are lessons that we must build on and incorporate into our own organizing. Current *Citizens United* reform efforts do not do so, because they are based almost entirely upon persuasion rather than force.

Those are the two primary reasons why we have not lent our name or energy to the *Citizens United* reform efforts. We believe that creating the necessary and desired outcomes requires us to focus not on merely reversing the Supreme Court’s latest expansion of corporate “rights,” but

on eliminating the basic (and mostly, unquestioned) authority of corporate minorities to override, and interfere with, democratic decision making by local and state majorities. It is the usurpation of community decision making authority that must be eliminated if we are to have any hope of building truly sustainable and democratic communities. **Corporations must be governable, and they must be governed by the people potentially affected by their actions.**

As with the movements that went before us, *we must become revolutionaries, not reformers.* And that means we must act on the understanding that our constitution was constructed, *from the beginning*, to systemically place decision making authority outside of majority control. As the architect of the constitution, James Madison, so clearly stated, the constitution, as drafted and ratified, was intended to “protect the minority of the opulent against the majority.”

Because the federal government and its constituent state governments are all harnessed to that structure of law, any popular movement that arises must seek to build enough power at the grassroots to force structural change at the state and federal levels. Pretending that we can start at those upper levels of governance to make real structural change validates the worst of this country’s history – *maintaining the illusion that we actually have an operating democratic system at those levels, and that all we have to do is mobilize enough people to activate it.*

Any serious movement must begin with that premise – that democracy is a myth. Rather than restore something that never was, a new movement must seek instead to actually create a democratic system.

Evidence that democracy is a myth is all around us. Why can’t our communities say “no” to natural gas fracking, corporate factory farms, the dumping of waste, or big-box stores? Why can’t we use our community governments to legally prohibit corporations from doing things that make sustainable agriculture, sustainable energy systems, or sustainable waste management policies impossible?

If we are truly the 99% to the corporate 1%, we must use our sheer numbers to turn that system upside down – *by seizing the power of our municipal governments to liberate our communities to begin lawmaking that matters.* It is time to engage in local lawmaking that elevates the rights of people, our communities, workers, and nature above these concocted legal doctrines that currently prohibit us from using our own governments to reach necessary goals.

It is only by driving those new systems of law, then defying governmental and corporate efforts to overturn them, that we will inspire new community activists who set their sights on building a new system that protects our communities while safeguarding the planet. It means giving birth to a *new community civil rights movement* powerful enough to dismantle all of the legal doctrines that currently enable a corporate minority to stop those transitions to sustainability from occurring.

It’s not just a pipe dream. It’s happening now, in over 150 communities in states across the country who have begun to take governance into their own hands. They’re doing it in a way reminiscent of the Abolitionists, the Suffragists, the Populists, and the civil rights movement that went before them – *not asking for permission from “higher” levels of government* – but doing what needs to be done on the basis of their right to community self-government.

This work cannot be accomplished by small groups from non-profit institutions meeting in their boardrooms. Rather, it requires grassroots organizing that will grow community by community, lawsuit by lawsuit, local law by local law; pressing outwards to eventually change state law and then federal law. Only then will we be able to force the kind of change that we want, and that our communities and this planet so desperately need.

The Community Environmental Legal Defense Fund works with communities across the country. If you are interested in learning more about this work, please contact us at info@celdf.org and visit our website at www.celdf.org.