

Senate Elections Committee
Senator Jim Carlson, chair
Senator Bonnie Westlin, co-chair

Committee meeting Tuesday, January 24, 2023 at 3p.m.

Testimony on behalf of [SF 0384](#), “A resolution memorializing Congress to overturn the United States Supreme Court decision *Citizens United v. FEC*...”

[\[A shorter ORAL version of this testimony will be presented at the hearing.\]](#)

Committee Chair and members, good afternoon. My name is Jeff Clark and I’m a supporter of Minnesota Move to Amend.

My testimony addresses why the resolution in this bill is important in shaping a government more responsive to the will of We the People, and also explains why the form of the bill is a crucial part of reaching the goal of a U.S. Constitutional amendment. This testimony can be taken as complement to other testimony on SF 0384 being delivered at this hearing.

The problems of huge expenditures of money and corporate power in our politics are long-standing. The decision cited in this bill, *Citizens United v. FEC*, is the most publicly visible but not the only decision leading up to our present imbalance: governance that is non-responsive to many public needs. A complete historical trail of those decisions can be found in this [Timeline on Corporate Personhood](#) from Public Citizen.

The strength of the resolution in S.F. 0384—which mirrors the current H. Joint Res. 48 in the House of Representatives—is that it expresses two principles clearly:

1. that “artificial entities” do not have the rights of natural persons under the Constitution;
2. and that the spending of money is not equivalent to First Amendment-protected free speech and can be regulated in the political process.

These principles, if adopted in an amendment that is ratified by the states, would provide not only authority for Congress to craft implementing laws, but most importantly guidance that constrains the judicial system re permissible arguments when deciding litigation. The so-called principles that corporations are “persons” and that spending money is “free speech” could no longer be employed in defending corporate litigants inimical to public needs that are social, environmental and other, as some of the other testimony as this hearing points out.

In effect, the amendment called for in this resolution would more fully address the problems of money and power in both our elections and our subsequent governance. This is because a two-part dynamic is involved.

Big money—whatever the source, and however concealed and “dark” those sources may be—can shape our electoral process by promoting or defeating candidates for office. Once in office, former candidates that have been groomed are beholden to the interests that support them and legislate accordingly.

Thus an inordinate investment of money in elections occurs. The 2022 race in CD2 between Angie Craig and Tyler Kistner saw \$18.8 million spent by independent groups. This was \$7 million more than was spent by the two campaigns combined. 90% of this spending by independent groups was categorized as against rather than for a candidate. ([Open Secrets](#)) The amendment proposed by SF0384 would enable Congress to control spending without judicial interference.

At the same time, mega-corporations are obliged to operate within existing laws at the federal and state levels that may hamper their overriding goal of maximizing profits. Being granted Constitutional rights as “persons” is a strong defense in court for deflecting accountability to such laws. In the course of our history, corporations, considered as “persons,” have been able to defend themselves in courts not only via the First Amendment, but also the Fourth (unreasonable search and seizure), Fifth (no takings without compensation, no compulsion of self-incriminating evidence) and Fourteenth Amendments (due process and equal protection of law). All of these as well as the “commerce” and “contract” clauses of the Constitution have been employed by corporations, often in novel ways, to deflect accountability in litigation. A very limited and select list of public benefits that could ensue if rights as “persons” were eliminated, can be found in [What Could Change if Corporate Personhood Were Abolished?](#)

In the foregoing way, this resolution and an amendment which reflects its principles, addresses the full problem of a responsive government answerable to We the People who established its government. Such an amendment establishes a “level playing field” for competing interests in the political process. “Artificial entities”—including corporations (even “B corporations”), nonprofit corporations and organizations, labor and other unions, even cooperatives—would have their “privileges” governed under law, rather than granted as the natural rights of persons under the Constitution. Labor unions already live within this constraint: they are governed by law only and in litigation have never been argued (successfully or not) to be “persons.”

The other subject of my testimony is why this bill, in the form of a resolution, is unlike many other resolutions. It has a specific purpose and is part of a goal-oriented process with a payoff.

Our U.S. Constitution can be amended in a limited number of ways. Usually, two-thirds of each house of Congress has drafted an amendment for ratification by three-quarters of the states. The drafting of an amendment can be self-initiated by Congress, but usually it has been at the behest of two-thirds of the states calling for a specific amendment. When the two-thirds calling threshold has been reached, Congress is obliged to act. Article V of the Constitution does not mention the state-petitioning process for persuading Congress to draft an amendment, but it has been and is now a traditional procedure. In 1912, the Seventeenth Amendment, direct election of senators, was passed by Congress (and ratified by the states in 1913) due to the petitioning of the states for it. As their number approached two-thirds, Congress decided to act. (See the National Archives on the [17th Amendment to the U.S Constitution](#).)

As of this testimony, 22 states have “petitioned” for an amendment comparable to the one in this resolution, although ours is the first to explicitly address corporate “rights” beyond First Amendment free speech. A complete listing of the states involved can be found in [States Ready to Amend](#).

States have used various forms of communicating their demand for a Constitutional amendment. Not all of them are via a resolution, but two relatively recent examples comparable to ours are [New Hampshire](#) (2019) and [Nevada](#) (2017).

Thus this resolution is not simply an expression of recognition or conviction, without a goal beyond publically honoring a person or being “on the record” for or against an issue. It is a resolution with concrete purpose and utility: to become another formal step in achieving a U.S. Constitutional amendment, once the number of states calling for it reaches 34.

Minnesota should become the 23rd state to make this call on Congress. I urge you to vote for S.F.0384 and help make this a reality.

Thank you.

Jeff Clark

Saint Paul MN 55117-4049
jeffclark.mta@gmail.com