



# California Corporate & Securities Law

## **Initiative Seeks To Dehumanize Corporations in California**

By Keith Paul Bishop on February 7, 2012

Are corporations “persons”? The California Corporations Code answers this question quite directly in Section 18 which defines “person” as including corporations and natural persons. The Corporate Securities Law of 1968 goes even further – defining “person” to mean an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.” Other codes also include corporations within the definition of “person”. Evidence Code Section 175, for example, defines a “person” to include a “firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity”.

For purposes of the *Nevada Revised Statutes* generally, the term “person” also includes corporation, partnership, association, trust or unincorporated organization. Unlike the CSL, however, Nevada does not count a government, governmental agency or political subdivision of a government as a person. NRS 0.039.

The Supreme Court’s decision in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010) has generated a great *sturm und drang* over the question of whether corporations are people. The case, however, didn’t deal with the broad question of whether a corporation was a person. Rather, the court was concerned about the application of the First Amendment to the U.S. Constitution to corporations. The amendment itself doesn’t even use the word “person”. Rather, it prohibits Congress from making laws “abridging the freedom of speech”.

Nonetheless, many opposed to the result in *Citizens United* have mounted an attack on the broader question of whether corporations are persons. In fact, a [proposed initiative measure](#) denying the personhood of corporations was recently submitted to the [California Attorney General](#) for preparation of a title and summary prior to circulation. This measure would add a new section to the State Constitution declaring that “Only human beings are valid and recognized people in California” and that “A corporation is not a person, and corporations are not due constitutional rights which human beings are naturally due.”

Should this initiative be circulated, placed on the ballot and approved by the voters, a number of interesting questions would arise. For example, would the statement that a corporation is not a person abrogate existing state statutes such as those described above defining “person” to include

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corporations? If the constitution specifically declares that corporations are not persons, what does this mean for other types of artificial entities? For example, could a limited liability company continue to enjoy status as a person under the principle of *expressio unius personae est exclusio alterius*? One thing would be certain, however, the initiative would not, and could not, overrule the U.S. Supreme Court's decision in *Citizens United*.

### **Two New Corporate Entities**

As a reminder, I will be participating in a program on February 8 in San Francisco and February 13 in Los Angeles focused on California's two new corporate forms – the flexible purpose corporation and the benefit corporation. Professor C. Hugh Friedman of the University of San Diego School of Law will be the moderator. The other panelists will be James F. Fotenos (Greene Radovksy Maloney Share & Hennigh LLP); Susan H. Mac Cormac (Morrison & Foerster); and John B. Montgomery (Montgomery & Hansen LLP). Registration information is available [here](#).

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