

## COMMENTARY



Protesters in Denver rally against Citizens United, a conservative political group at the heart of the corporate personhood decision by the U.S. Supreme Court.

REUTERS/RICK WILKING

## Corporations aren't people — except in politics

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Janice Thompson is the executive director for Common Cause Oregon. She is the former head of Democracy Reform Oregon (which was previously known as the Money in Politics Research Action Project). Common Cause is a nonpartisan, nonprofit advocacy organization founded as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest.

### ARTICLE 1 – Portland City Council says that corporations aren't people

On Jan. 12, the Portland City Council adopted a resolution in support of amending the U.S. Constitution to address the Citizens United decision and the notions that money equals speech and corporations are people.

Portland joined New York City, Los Angeles, and a growing number of other cities in objecting to corporations being given undue constitutional protections. One feature of the Portland resolution is that it also urges regulating independent expenditures, like those made by super PACs (political action committees) in the presidential primaries. The resolution also requires the city attorney to assess the legal feasibility for the council to refer an advisory question for a popular vote.

Mayor Sam Adams introduced the resolution and said, "The discussion in front of us is not a big rhetorical discussion about whether corporations are good or bad. It depends on the corporation. This resolution is about what kind of electoral system the U.S. wants to design."

The opening panel of testifiers included representatives of Portland Move to Amend, Portland Alliance for Democracy, Occupy Portland, and Common Cause Oregon. Occupy Portland's advocacy was a critical tipping point for action by the City Council on a topic that Portland Move to Amend and Alliance for Democracy began to work on in early 2011. Many other groups also testified in support including a representative from the Program on Corporation, Law & Democracy that began its work to abolish all constitutional rights for corporations 15 years ago.

More than a dozen city residents spoke as individuals in support for this local action, citing corporate personhood and the

Citizens United decision as a fundamental assault on democracy. An accountant and small business owner supported the resolution and stressed that it was not anti-business.

The only opposition came from an individual concerned that the resolution wasn't fair and the American Civil Liberties Union of Oregon, whose representative instead urged support for public financing reform and rigorous campaign finance disclosure requirements.

The vote was 3-0 with Commissioners Nick Fish and Dan Saltzman absent. The Portland Alliance for Democracy reports that Fish had indicated support for the resolution prior to his absence.

### ARTICLE 2 – What did Citizens United do?

The Citizens United decision by the U.S. Supreme Court focused on one aspect of the flow of money in federal candidate campaigns: independent expenditures, which are payments for electioneering for or against a candidate that are produced independently of the candidate.

Independent expenditures are treated differently from direct contributions due to two elements of the Buckley v. Valeo decision. The 1976 Buckley decision addressed reforms adopted in the Federal Election Campaign Act (FECA) as amended in 1974 in response to reports of serious financial abuses in the 1972 Presidential campaign.

Buckley upheld limits on direct contributions to candidates because free speech concerns were outweighed by the potential for corruption or the appearance of corruption.

Putting limits on direct candidate contributions, though, sets the stage for independent expenditures. This is why FECA included limits on independent expenditures from individuals, associations

and PACs. The Buckley court, however, found that due to the independent nature of this type of political spending from these groups, there is no potential for corruption. The court also rejected other reasons for regulating independent expenditures such as fairness or leveling the playing field.

This means that even before the Citizens United decision there were independent expenditures in federal campaigns, just none paid with corporate treasury dollars.

Before Citizens United there was a history of regulation on corporate political spending that began with the 1907 Tillman Act. In 1947, the Taft-Hartly Act barred labor unions and corporations from making expenditures and contributions in federal elections. These limits were such established law that they weren't part of the litigation that led to the Buckley decision.

In 1990, Austin v. Michigan Chamber of Commerce was upheld by the U.S. Supreme Court and described the reason for regulating corporate political spending as the "corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."

This Austin rationale was the key factor in upholding McCain-Feingold regulations on use of corporate treasury dollars for electioneering. These were the regulations of concern to the nonprofit group Citizens United regarding contributions for distribution of its movie about Hillary Clinton.

The Citizens United decision overturned Austin and eliminated the part of McCain-Feingold that regulated corporate-independent electioneering. The Citizens United decision upheld legal provisions about campaign finance disclosure but inaction by the Federal Elections Commission and Congress to update these

See CORPORATIONS, page 5