

Portland City Council's Resolution against corporate personhood: Jan 12, 2012

Establish as a position of the Portland City Council that corporations should not have the constitutional rights that natural persons possess, that money is not speech and that independent campaign expenditures and campaign contributions should be regulated (Resolution)

WHEREAS, each year, the City of Portland updates its Federal Legislative Agenda; and,

WHEREAS, the United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings also known as "natural persons"; and,

WHEREAS, corporations can and do make important contributions to our society, but the City Council does not consider them natural persons; and,

WHEREAS, while state and federal governments may provide certain privileges to corporations, these privileges do not equate to the rights of natural persons protected by the U.S. Constitution; and,

WHEREAS, the right to free speech is a fundamental freedom and unalienable right and fair elections are essential to democracy and effective self-governance; and,

WHEREAS, United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations"; and,

WHEREAS, the United States Supreme Court held in Buckley v. Valeo (1976) that the appearance of corruption justified limits on contributions to candidates, but rejected other fundamental interests that the City Council finds compelling such as creating a level playing field and ensuring that all citizens, regardless of wealth, have an opportunity to have their political views heard; and,

WHEREAS, the United States Supreme Court in Buckley overturned limits on independent campaign expenditures by individuals,

associations, and political action committees because it found that the government's interest in preventing corruption or perception of corruption of elections was sufficient only to allow limits on direct contributions to candidates; and,

WHEREAS, United States Supreme Court Justice John Paul Stevens observed in Nixon v. Shrink Missouri Government PAC (2000) that "money is property, it is not speech,"; and,

WHEREAS, the United States Supreme Court recognized in Austin v. Michigan Chamber of Commerce (1990) the threat to a republican form of government posed by "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" and upheld limits on independent expenditures by corporations; and,

WHEREAS, the United States Supreme Court in Citizens United v. The Federal Election Commission (2010) overruled the decision in Austin and the portion of McConnell v. Federal Election Commission (2003) that had upheld restrictions on independent corporate expenditures, holding that the First Amendment protects unlimited direct corporate spending to influence elections, candidate selection, and policy decisions and to sway votes; and,

WHEREAS, prior to Citizens United decision unlimited independent campaign expenditures could be made by individuals and associations, though such committees operated under federal contribution limits; and,

WHEREAS, given that the Citizens United decision "rejected the argument that political speech of corporations or other associations should be treated differently" because the First Amendment "generally prohibits the suppression of political speech based on the

speaker's identity," there is a need to consider other reasons in addition to corruption or the perception of corruption regulating independent expenditures for or against a candidate; and,

WHEREAS, a February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the U.S. Supreme Court Citizens United ruling that allowed use of corporate treasury dollars for independent expenditures; and,

WHEREAS, the opinion of the four dissenting justices in Citizens United noted that corporations have special advantages not enjoyed by natural persons, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets; and,

WHEREAS, corporations are legally required to put profits for shareholders ahead of concerns for the greatest good of society while individual shareholders as natural persons balance their narrow self-interest and broader public interest when making political decisions; and,

WHEREAS, Oregon Senator Jeff Merkley and Oregon Representatives Peter DeFazio, Earl Blumenauer, and Kurt Schrader are pursuing campaign finance reform legislation with a focus on addressing Citizens United through amendments to the United States Constitution; and,

WHEREAS, addressing both the Citizens United decision, and corporate personhood is necessary; and,

WHEREAS, the City Councils of Missoula, Montana; Boulder, Colorado; and Madison, Wisconsin have referred the issue of corporate personhood to their communities for an advisory vote;

NOW, THEREFORE, BE IT RESOLVED that it is the position of the Portland City Council that corporations should not have the

constitutional rights that natural persons possess; and,

BE IT FURTHER RESOLVED given its impact on free and fair elections and effective self-governance that Portland City Council determines that the most urgent action needed to address the negative impacts of United States Supreme Court Citizens United (2010) decision is to stop unlimited independent campaign expenditures by corporations; and,

BE IT FURTHER RESOLVED that the City of Portland hereby includes in its 2012 Federal Legislative Agenda support for an Amendment to the United States Constitution, which consistent with this Resolution, reverses the impacts of Citizens United, including, but not limited to the provisions of the current drafts of S. J. Res. 29 introduced by Senator Tom Udall of New Mexico and Senator Jeff Merkley of Oregon and H.J. Res. 72 introduced by Representative Kurt Schrader of Oregon and co-sponsored by Representatives Earl Blumenauer and Peter DeFazio of Oregon; and, respectfully urges Oregon's Congressional delegation to prioritize congressional proposal of an amendment to the United States Constitution addressing the threats to representative government identified in this resolution so that the states may ratify it; and,

BE IT FURTHER RESOLVED that Portland City Council requests that the City Attorney's Office determine the legality and process of referring an advisory vote to the citizens of Portland on the issue of corporate personhood, and present their findings within 30 days to the Council for further consideration; and,

BE IT FURTHER RESOLVED that the City of Portland calls on other communities and jurisdictions and organizations like the U.S. Conference of Mayors and National League of Cities to join with us in this action by passing similar Resolutions.

CORPORATIONS, from page 4

rules has resulted in transparency problems.

After the Citizens United decision on Jan. 21, 2010, corporate entities could begin using treasury dollars for independent expenditures regarding federal candidates. Keep in mind that corporate entities include businesses and unions. In the case of unions, corporate treasury dollars means money that comes from the thousands of

members of those groups. In the case of corporations, corporate treasury dollars mean profits.

Since independent expenditures before Citizens United could be legally paid for by individuals and PACs, the presence of independent expenditures in 2010 wasn't new, but the volume increased due to the new availability of corporate money.

This means, however, that overturning Citizens United doesn't enable regulation of all independent expenditures. This is why one valuable element of the Portland resolution is that it recognizes the need to consider other reasons besides a narrow focus on corruption as the basis for campaign finance regulations.

Though one effect of Citizens United was to equate corporations with people and groups, it did so on the basis of the First Amendment. In the words of corporate personhood activist Jeffrey Clements, "Citizens United is a corporate power case masquerading as a free speech case." This means that addressing corporate

personhood alone isn't enough, but Citizens United joins a long list of court decisions that inappropriately give corporations undue constitutional protections. This is why it is so important that the Portland resolution addressed corporate personhood.

What Citizens United didn't do is overturn limits on direct contributions to candidates from individuals and PACs. It also didn't overturn a ban on use of corporate treasury dollars for contributions directly to federal candidates, though this ban is under attack in a new court case.

The catch, of course, is that the effectiveness of these limits is undermined by the growing volume of independent expenditures.

This trend got worse when, due to Citizens United, previous limits on the size of contributions to PACs making independent expenditures were overturned by a lower court. That decision led to the formation of super PACs that can only make independent expenditures using contributions of any size from any source.

The court didn't accept the argument that "large contributions to independent expenditures lead to preferential access for donors and undue influence over officeholders." One wonders about that reasoning when there are donors like Las Vegas casino owner Sheldon Adelson, who gave a whopping \$5 million to Winning Our Future, the super PAC formed to support Newt Gingrich's presidential bid. Winning Our Future is led by past associates of Gingrich, a trend seen in most super PACs including those that support President Obama.

The Center for Responsive Politics reports a spending spike by political nonprofits in 2010 after the Citizens United decision, because now those groups could use corporate contributions for

electioneering at any time. Trade associations such as the U.S. Chamber of Commerce are in this group that, under IRS rules, do not have to reveal their donors. Bill Moyers reports that the Chamber with "most of its funds from about a hundred businesses" such as British Petroleum and JP Morgan Chase spent "approximately \$75 million" during the 2010 campaigns through a "covertly funded front."

Labor unions have also spent money in new ways after Citizens United. For example, AFSCME used \$7 million in treasury dollars for independent expenditures, and the National Education Association set up a \$3.3 million super PAC during the 2010 elections. This union spending, however, comes from their many members and is outnumbered by business spending on politics.

To summarize, Citizens United had a major impact on federal campaigns in 2010 with all indications that the 2012 election season will be even more dominated by money flowing in new and poorly disclosed ways. In the words of Jim Hightower, "the more you spend on politics, the bigger your voice is in government, making the vast vaults of billionaires and corporations far superior to the voices of mere voters."

National polling indicates that 80 percent of Americans oppose the Citizens United ruling. Reclaiming our democracy from plutocracy is why the Portland resolution addressing corporate personhood and the Citizens United decision is such an important first step.

Read Janice Thompson's breakdown of campaign financing in the Portland mayoral race, "Movers, shakers and moneymakers," at www.streetroots.wordpress.com

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