

Testimony of Kirk Leonard, Salem, Oregon, on HJM 6.

Mr Chair, Vice chairs and members of the committee. I am Kirk Leonard and I reside here in Salem. I am a member of Marion Polk Move to Amend, and I'm here because of my deep concern for our democracy.

The 2010 Citizens United decision opened the floodgates of money in our elections, and it also caused a groundswell of citizen action, rising nationwide to end Supreme Court-made election laws and granting of constitutional rights to corporations.

Previously, perhaps a dozen pro-democracy organizations and a few thousand people were concerned about the loss of our democratic republic as a result of an array of "judge-made laws" extending back 200 years. After Citizens United, a fire was lit. Today there are hundreds of local, state and national organizations focused on realizing a constitutional amendment to overrule the court, as has had to happen 7 times in our history.

There are hundreds of thousands of us now, tens of thousands in Oregon, and more than a million people have voted in support of a constitutional amendment to end the money as free speech and corporate constitutional rights doctrines of the Supreme Court.

Here are some numbers to consider:*

During the last session of Congress 15 unique bills were filed for an amendment (two were in both houses). In this session, 10 unique bills have been introduced (one in both houses).

In the last two years, 31 voter initiatives and referrals have passed around the country, four of the them in Oregon. 11 are in progress.

273 local government (councils, commissions, town meetings) resolutions have been adopted, including 10 in Oregon, and 52 are in progress.

Twelve states have taken the formal constitutional step of petitioning the Congress for an amendment, and 14 states have resolutions in progress, including Oregon and HJM 6.

We hope Oregon will be the next state to take that constitutional step.

I have also included two short articles for the record. They are "Why Abolish Corporate Constitutional Rights" and "Our Hidden History of Corporations in the United States."

*Details on votes are available at <https://movetoamend.org/resolutions-map>. Details on congressional bills are available at <http://www.united4thepeople.org/amendments.html>.

Why Abolish Corporate Constitutional Rights?

Adapted from the **Program on Corporations, Law and Democracy**, July 2012

The Program on Corporations, Law & Democracy (poclad.org) has educated, advocated and organized for over 15 years against the rights of corporations to govern. Through historical and legal research, writings, speaking, workshops and strategic discussions, we helped build widespread awareness of what we call "corporate personhood" - the corporate acquisition of constitutional rights intended solely for natural persons that have usurped the rights of We the People to govern ourselves.

Corporations are creations of state laws, not by the Constitution. As is documented in many resources over many years, they couldn't exist in any form without the legal sanctioning of government. Since citizens are the source of all legitimate power in any representative democracy, We the People have the power to define corporations any way we see fit. We the People have rights and authority. Originally, corporations only possessed privileges bestowed by the state, and the people.

The appointed-for-life US Supreme Court "found" corporations in numerous places in the US Constitution over the past 126 years because there was no other prevailing law to settle the questions corporate lawyers posed. These "findings" gave rights to corporations, including many of those in the Bill of Rights. In other words, illegitimate corporate power didn't begin in 2010. The corporate perversion of rights and the Constitution have resulted in the destruction of our communities, economy, politics and natural world in many ways for a very long time, since 1886, actually.

POCLAD believes ALL corporate constitutional rights should be abolished. These include at least the following:

- * **1st Amendment Free Speech rights.** Corporations use these rights, meant to protect human beings from the power of the state, to influence elections through political "contributions" (more like "investments"); to advertise for guns, tobacco and other dangerous products over the objections of communities; to avoid having to label genetically modified foods. They can choose to speak, or not, regardless of consequences.
- * **4th Amendment Search and Seizure rights.** Corporations have used these rights to avoid subpoenas for unlawful trade and price fixing, and to prevent citizens, communities and regulatory agencies from stopping corporate pollution and other assaults on people or the commons.
- * **5th Amendment Takings, Double Jeopardy and Due Process corporate rights.** Corporations must be compensated for property value lost (i.e. future profits) when regulations are established to protect homeowners or communities. Corporations cannot be retried after a judgment of acquittal in court. The granting of property to a corporation by a public official cannot be unilaterally revoked by a subsequent public official or Act of Congress.
- * **6th and 7th Amendments, To Prolong Judicial Proceedings,** as Exxon did with the Valdez oil spill and BP is doing on the 2010 Gulf disaster. With endless appeals, long delays and vastly greater resources, they win in the courts and justice for people is not served.

* **14th Amendment Due Process and Equal Protection corporate rights.** These rights, originally enacted to free slaves from oppression, were gradually extended to corporations by the courts. Corporations have used them to build chain stores and erect cell towers against the will of communities; oppose tax and other public policies favoring local businesses over multinational corporations; and resist democratic efforts to prevent corporate mergers and revoke corporate charters through citizen initiatives.

* **Commerce Clause-related corporate rights.** Corporations have used this section of the Constitution (Art 1, Sec 8), for example, to ship toxic waste from one state to another over the "health, safety, and welfare" objections of communities - claiming the waste isn't actually "waste" but "commerce."

* **Contracts Clause-related corporate rights.** The Supreme Court ruled in *Dartmouth vs. Woodward* (1819) that a corporation is a party in a private contract based on the Contracts Clause (Art 1, Sec 10) rather than being a creature of public law. Even though the state creates a corporation when it issues a charter, that state is not sovereign over the charter, merely a party to a contract. Thus, corporations became "private contractors" with the state and, therefore, shielded from many forms of democratic control.

Since the problem of corporate constitutional rights is multidimensional, the solution must be comprehensive. In any new constitutional amendment, we must now include the status of corporations, which our founders did not do. Corporations, entirely self-interested, have used our laws and courts, and their economic power and wealth, to usurp our government and legislatures, and deny the will of the people. Corporations now have more rights than people, and may destroy our democracy as a result.

The threat to authentic democratic self-governance comes from the fact that corporations have been defined as legal persons. Corporations have exercised this illegitimate, un-constitutional status in many ways. Addressing only one or two of those ways won't reverse the profound corporate threat to We the People having ultimate power to govern. The problem is greater than "free speech rights" or "due process" or "takings."

One hundred and sixty years ago, those who believed the section of the Constitution (Art 4, Sec 2) defining people as property (slavery) was fundamentally immoral didn't call for ending one or two dimensions of slavery. They didn't organize to establish a Slavery Protection Agency, nor ask slaveholders to sign a voluntary code of conduct to treat slaves a little less harshly. They called for abolition of the institution of slavery.

In reflecting that thinking, POCLAD and others who hold that defining property as people and corporations as people with human rights ("corporate personhood") are fundamentally immoral and a threat to real people and the planet, believe that we should not limit our vision and actions. Let's set out to amend the constitution in a way that abolishes all rights wrongly granted to the corporate forms during the last two centuries. Let's put an end to the institution of corporate personhood itself.

Nothing less is worth the considerable time and learning, grit and energy required to amend the Constitution.

Why not make the result worth the effort? Corporations should be doing what we authorize them to do best: business...not politics.

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Our Hidden History of Corporations in the United States

When American colonists declared independence from England in 1776, they also freed themselves from control by English corporations that extracted their wealth and dominated trade. After fighting a revolution to end this exploitation, our country's founders retained a healthy fear of corporate power and wisely limited corporations exclusively to a business role. Corporations were forbidden from attempting to influence elections, public policy, and other realms of civic society.

Initially, the privilege of incorporation was granted selectively to enable activities that benefited the public, such as construction of roads or canals. Enabling shareholders to profit was seen as a means to that end. The states also imposed conditions (some of which remain on the books, though unused) like these*:

- Corporate charters (licenses to exist) were granted for a limited time and could be revoked promptly for violating laws.
- Corporations could engage only in activities necessary to fulfill their chartered purpose.
- Corporations could not own stock in other corporations nor own any property that was not essential to fulfilling their chartered purpose.
- Corporations were often terminated if they exceeded their authority or caused public harm.
- Owners and managers were responsible for criminal acts committed on the job.
- Corporations could not make any political or charitable contributions nor spend money to influence law-making.

For 100 years after the American Revolution, legislators maintained tight control of the corporate chartering process. Because of widespread public opposition, early legislators granted very few corporate charters, and only after debate. Citizens governed corporations by detailing operating conditions not just in charters but also in state constitutions and state laws. Incorporated businesses were prohibited from taking any action that legislators did not specifically allow.

States also limited corporate charters to a set number of years. Unless a legislature renewed an expiring charter, the corporation was dissolved and its assets were divided among shareholders. Citizen authority clauses limited capitalization, debts, land holdings, and sometimes, even profits. They required a company's accounting books to be turned over to a legislature upon request. The power of large shareholders was limited by scaled voting, so that large and small investors had equal voting rights. Interlocking directorates were outlawed. Shareholders had the right to remove directors at will.

In Europe, charters protected directors and stockholders from liability for debts and harms caused by their corporations. American legislators explicitly rejected this corporate shield. The penalty for abuse or misuse of the charter was not a plea bargain and a fine, but dissolution of the corporation.

In 1819 the U.S. Supreme Court tried to strip states of this sovereign right by overruling a lower court's decision that allowed New Hampshire to revoke a charter granted to Dartmouth College by King George III. The Court claimed that since the charter contained no revocation clause, it could not be withdrawn. The Supreme Court's attack on state sovereignty outraged citizens. Laws were written or re-written and new state constitutional amendments passed to circumvent the (*Dartmouth College v Woodward*) ruling. Over several decades starting in 1844, nineteen states amended their constitutions to make corporate charters subject to alteration or revocation by their legislatures. As late as 1855 it seemed that the Supreme Court had gotten the people's message when in *Dodge v. Woolsey* it reaffirmed state's powers over "artificial bodies."

But the men running corporations pressed on. Contests over charter were battles to control labor, resources, community rights, and political sovereignty. More and more frequently, corporations were abusing their charters to become conglomerates and trusts. They converted the nation's resources and treasures into private fortunes, creating factory systems and company towns. Political power began flowing to absentee owners, rather than community-rooted enterprises.

The industrial age forced a nation of farmers to become wage earners, and they became fearful of unemployment—a new fear that corporations quickly learned to exploit. Company towns arose, and blacklists of labor organizers and workers who spoke up for their rights became common. When workers began to organize, industrialists and bankers hired private armies to keep them in line. They bought newspapers to paint businessmen as heroes and shape public opinion. Corporations bought state legislators, then announced legislators were corrupt and said that they used too much of the public's resources to scrutinize every charter application and corporate operation.

Government spending during the Civil War brought these corporations fantastic wealth. Corporate executives paid “borers” to infest Congress and state capitals, bribing elected and appointed officials alike. They pried loose an avalanche of government financial largesse. During this time, legislators were persuaded to give corporations limited liability, decreased citizen authority over them, and extended durations of charters.

Attempts were made to keep strong charter laws in place, but with the courts applying legal doctrines that made protection of corporations and corporate property the center of constitutional law, citizen sovereignty was undermined. As corporations grew stronger, government and the courts became easier prey. They freely reinterpreted the U.S. Constitution and transformed common law doctrines.

One of the most severe blows to citizen authority arose out of the 1886 Supreme Court case of *Santa Clara County v. Southern Pacific Railroad*. Though the court did not make a ruling on the question of “corporate personhood,” thanks to misleading notes of a clerk, the decision subsequently was used as precedent to hold that a corporation was a “natural person.” This story was detailed in “The Theft of Human Rights,” a chapter in Thom Hartmann's recommended book *Unequal Protection*.

From that point on, the 14th Amendment, enacted to protect rights of freed slaves, was used routinely to grant corporations constitutional “personhood.” Justices have since struck down hundreds of local, state and federal laws enacted to protect people from corporate harm based on this illegitimate premise. Armed with these “rights,” corporations increased control over resources, jobs, commerce, politicians, even judges and the law.

A United States Congressional committee concluded in 1941, “The principal instrument of the concentration of economic power and wealth has been the corporate charter with unlimited power....”

Many U.S.-based corporations are now transnational, but the corrupted charter remains the legal basis for their existence. At Reclaim Democracy!, we believe citizens can reassert the convictions of our nation's founders who struggled successfully to free us from corporate rule in the past. These changes must occur at the most fundamental level — the U.S. Constitution.

We are indebted to our friends at the Program on Corporations, Law and Democracy (POCLAD) for their research, adapted with permission for this article.

<http://reclaimdemocracy.org/corporate-accountability-history-corporations-us/>