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Citizens United, Corporations Are Not People, and Amending the Federal Constitution

Five Key Points about *Citizens United*

- The *Citizens United* decision pertained to independent political campaign spending. Independent expenditures are payments for electioneering in support of or against a candidate that are produced without consultation with the candidate. Because they are independent, there are no limits on this category of political spending.
- *Citizens United* overturned a long time ban on spending by corporations on independent political campaign spending. This ban had been in place due to there being so much corporate money that those dollars flooding into political campaigns would have a “corrosive” effect on the political process.
- There has been no limit on how much can be spent on independent expenditures using money from PACs and individuals since *Buckley v. Valeo* in 1976 because that U.S. Supreme Court decision found that independent political campaign spending doesn’t “corrupt or appear to corrupt” because it is independent of the candidate. The notion that independent expenditures aren’t corruptive flies in the face of common sense but reflects our current legal reality.
- This means that there were independent expenditures before *Citizens United*, just none paid for by corporations. Keep in mind that the word corporation includes businesses, nonprofits, and unions – any corporate entity.
- *Citizens United* did not affect limits on direct contributions to candidates. Sometimes people think that this decision removed all campaign finance regulations which is not true. However, limits on contributions directly to candidates are undermined by increased independent political campaign spending.

Effect of *Citizens United* on 2010 Campaigns: All these trends are accelerating in 2012

- In 2010, according to the Center for Responsive Politics, 72 percent of the money spent on federal political ads came from groups prohibited from such spending in the previous mid-term election in 2006 or SuperPACs that didn’t exist before 2010.
- A study by the Center for Responsive Politics and the Center for Public Integrity found that more than 100 nonprofits organized as 501 c 4 groups spent roughly \$95 million on political expenditures in the 2010 election compared with \$65 million by SuperPACs.
- Conservative 501 c 4 groups outspent liberal groups nearly 5 to 1, \$78 million to \$16 million.
- The Center for Responsive Politics indicates that there were 84 SuperPACs formed during the 2010 election cycle, primarily related to congressional candidates. Not all of them were big spenders, but slightly more than \$65 million was spent by SuperPACs for independent political

expenditures, with \$35.6 million from conservative SuperPACs and \$28.4 from liberal SuperPACs.

Corporations Are Not People and *Citizens United*

- Corporations are not mentioned in the U.S. Constitution which is intended to guarantee rights for human beings only.
- In the words of Justice John Paul Stevens in his *Citizens United* dissent, "... the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process."
- This is why an amendment to the U.S. Constitution should address money not being speech and corporations not being people.
- It is important to note that this isn't anti-business. Corporations are granted privileges by local, state, and federal government because they do play an important role in our society and merit certain legal protections. But corporate entities shouldn't be equated with human beings and shouldn't be granted constitutional rights.

Amending the U.S. Constitution

- A constitutional amendment is needed because U.S. Supreme Court decisions cannot be overturned by Congressional legislation. Seven amendments have overturned decisions by the U.S. Supreme Court.
- The U.S. Constitution includes Article V that outlines two options on how to amend that document. This is an indication that the Founding Fathers recognized that their work might require future adjustments.
 - Option 1: On a two-thirds majority vote of U.S. House and Senate, they can adopt an amendment that must then be ratified by three-quarters of the 50 state legislatures. This is the method used to adopt all of the 27 amendments to the original constitution
 - Option 2: Two-thirds of state legislatures can call for a Constitutional Convention. This method has never been used to amend the constitution.
- Common Cause has not proposed its own constitutional amendment, rather we're focused on education about needing to amend the U.S. Constitution consistent with the following principles:
 - Corporations are not people and should not be given constitutional rights
 - Money is property and not speech which enables campaign finance regulation
 - Expand reasons for reform beyond narrow focus on corruption to include fairness and leveling the playing field to allow setting limits on independent political campaign spending
- This approach enables us to work in partnership with all the groups interested in this topic and we are a key player in Oregonians for Restoring Constitutional Democracy advocating for an enactment of a state resolution calling for a federal constitutional amendment during the 2013 Legislature.