Corporate Personhood

Senate Judiciary Committee
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Executive Summary

According to Webster, human beings are persons, but human beings have created another entity that is considered a "person" - the corporation. There have been three successive theories of corporate personhood: the artificial person, the aggregate person, and the natural person theories. The status of corporations as natural persons happened quite suddenly when, without explanation or dissent, U.S. Supreme Court Justice Waite pronounced before the beginning of argument in *Santa Clara County v. Southern Pacific Railroad Company* that "[t]he court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does."

Subsequently, *First National Bank of Boston v. Bellotti* involved a state limitation on a corporation's ability to spend money on advertisements related to ballot referendums. While declining to consider whether corporations always have First Amendment rights, *Bellotti* rejected distinctions between corporate and individual rights and focused on the First Amendment rights of the listener. The dissent by Justices White, Brennan, Marshall stated that ". . . the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only our economy but the very heart of our democracy . . ."

Until the U.S. Supreme Court decision in *Citizens United v. FEC*, the logic used in *Bellotti* did not extend beyond its narrow context. In the *Citizens United* 5-4 opinion written by Justice Kennedy, the Court broadly held that: (1) no distinction can be drawn between the First Amendment rights of individuals and corporations in the electoral context, and that (2) "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Accordingly, the Court invalidated all state and federal laws preventing corporations from using general treasury funds for political spending or otherwise regulating corporate independent electioneering expenditures.

Twenty-four states have laws limiting or prohibiting corporate electioneering. All of these state laws are subject to the ruling in *Citizens United* and are invalid to the degree that they violate the First Amendment rights of corporations. Washington statutes focus on the disclosure of contribution information by individuals and corporations. The *Citizens United* court clearly stated that disclosure and disclaimer provisions are a least restrictive alternative that meets constitutional muster.

During the 2010 legislative session, SJM 8077 was introduced. It urged the President and Congress to adopt an amendment to the United States Constitution providing that corporations are not persons. This Memorial was heard by the Senate Judiciary Committee, but was not passed. A number of states introduced resolutions similar to the Washington Legislature's SJR 8077. Only Maryland has successfully passed a resolution asking the President and Congress to adopt a similar amendment to the United States Constitution.

Development of Corporate Identity Theory

Historically, there have been three theories of corporate personhood: the artificial person theory, the aggregate person theory, and the natural person theory. Understanding each of these theories helps provide a framework within which to observe and analyze the development of corporate personhood law.

Artificial Person Theory

Under the artificial person theory, corporations are not people at all but rather they are the artificial creation of human beings and are given personhood status solely as a legal fiction to facilitate commerce. They are "the creation of the legislature, owing existence to state action, rather than to acts of shareholder- incorporators.[i][1] Accordingly, the only rights a corporation can claim are the rights which are granted in corporate charters, not the rights which belong to its members as citizens of the state.[2] This theory of corporate identity prevailed until the mid 1800s.

In the case of *Dartmouth College v. Woodward*[3], the legislature of New Hampshire attempted to alter Dartmouth's charter in order to reinstate the College's deposed president, placing the ability to appoint positions in the hands of the governor, adding new members to the board of trustees, and creating a state board of visitors with veto power over trustee decisions, effectively converting the school from a private to a public institution. The U.S. Supreme court ruled in favor of the College and invalidated the act of the New Hampshire Legislature, which in turn allowed Dartmouth to continue as a private institution and take back its buildings, seal, and charter. The majority opinion of the court was written by Chief Justice John Marshall. The opinion affirmed Marshall's belief in the sanctity of a contract as necessary to the functioning of a republic. Marshall's opinion emphasized that the term "contract" referred to transactions involving individual property rights, not to "the political relations between the government and its citizens. In his opinion, Marshall put corporations on a different legal footing than real people when he stated that a "corporation is an artificial being, invisible, intangible, and existing only in the contemplation of law. . ."[4] This was, however, the first time that the court found a corporation as an entity with Constitutional protection.

Subsequent cases reaffirmed that corporations were artificial persons created by the state. For example, in *Marshall v. Baltimore and Ohio Railroad Co.*[5], the U.S. Supreme Court relied on the language from *Dartmouth College* to hold that a corporation should be treated as a separate person with a single state of residence for jurisdictional

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[1] Blumberg, Phillip I., The Corporate Entity in an Era of Multinational Corporations, *15 Del. J. Corp. Law 283 (1990).*
[2] See, *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519 (1839).
[3] 17 U.S. (4 Wheat Pet.) 518 (1819).
[4] Id. at 636.
[5] 57 U.S. (16 How.) 314 (1853).

purposes. The corporation was not a citizen, but it was an effective legal fiction. The artificial person theory was a regulatory model and was viewed by many as vulnerable to political favoritism and monopolistic practices.[6]

By the mid-to-late 1800s, the artificial person theory was waning, in favor of the aggregate person theory. In *Paul v. Virginia*[7], the United States Supreme Court held that a corporation was not a citizen, although it could be a person, within the meaning of the Privileges and Immunities Clause.[8]

Aggregate Person Theory

Under the aggregate person theory, corporations are viewed as collections of individuals that have no existence separate from that of their members. They are collections of individuals who contract with each other for their mutual benefit. While the state may regulate corporations, they exist separate from the state and for private purposes. The role of the state is to support the individual shareholders and avoid interfering with their private pursuits. This idea was useful in shielding corporations from stifling public supervision.[9]

State Railroad Tax Cases[10] involved consolidated challenges to Illinois taxation legislation. The district court held that to deprive a corporation of its property would, in fact deprive the corporators of their property. The court treated the corporations as persons, worthy of Fourteenth Amendment protection reasoning that it was not logical to cease offering Constitutional protection to individuals simply because they became members of a corporation.

The aggregate person theory, however, produced some unanticipated consequences that could stifle corporate expansion. If corporations differed little from partnerships, would unanimous shareholder approval be required in some circumstances? What would be the possibility of shareholder liability when corporations faced insolvency? These questions remained unresolved because the natural person theory emerged.

Natural Person Theory

As the scale of corporations grew, it became difficult view corporations as aggregations in an environment of dispersed ownership, small individual holdings, and the need for

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[6] Ripkin, Susanna K., Corporations Are People Too: A Multi-Dimentional Approach to the Corporate Personhood Puzzle, *15 Fordham J. Corp. and Fin. Law 97 (2009).*

[7] 75 U.S. (8 Wall) 168 (1869).

[8] U.S. Constitution, Article IV, Section 2. "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

[9] Millon, Dave, The Ambiguous Significance of Corporate Personhood 5 (Washington & Lee Pub. Law & Legal Theory Research Paper Series, Working Paper No. 01-6, 2001).

[10] 92 U. S. 575 (1875).

capital accumulation.[11] *Santa Clara County v. Southern Pacific Railroad Company*[12] involved the recovery of certain county and state taxes claimed to be due from the Southern Pacific Railroad Company and the Central Pacific Railroad Company under assessments made by the California state board of equalization upon their respective franchises, road-ways, road-beds, rails, and rolling stock. Without argument, explanation, or dissent, U.S. Supreme Court Justice Morrison Remick Waite simply pronounced before the beginning of argument in the case that "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does."[13]

The court reporter entered into the summary record of the Court's findings that:

> The defendant Corporations are persons within the intent of the clause in section 1 of the Fourteen Amendment to the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.

A two-sentence assertion by a single judge elevated corporations to the status of persons under the law and a claim to equal protection. The natural person theory carried the day and was premised on the belief that corporations "live" separately from the lives of their shareholders.

Cumulatively, the cases using this theory of corporate personhood gave corporations the individual rights necessary to challenge state and federal regulations. The court quite clearly stated in *Gulf, Colorado & Santa Fe Railway Co. v. Ellis*[14] that a "state has no more power to deny to corporations the equal protection of the law than it has to individual citizens."[15] Note that the protection is not derived from the rights of the shareholders, it exists independently.[16]

In Washington, the courts have recognized corporations as separate persons. Most recently in *Cottinger v. State, Department of Employment Security*[17], the court

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[11] Supra, Note 10.
[12] 118 U.S. 394 (1886).
[13] Id. at 396.
[14] 165 U.S. 150 (1897).
[15] Id. at 154.
[16] See also, *Minneapolis & St. Louis Railroad Co. v. Beckwith*, 129 U.S. 26 (1889) (Corporation is a person for both due process and equal protection); *Noble v. Union River Logging R. Co.*, 147 U.S. 165 (1893) (Corporations have a claim to the Bill of Rights - 5th Amendment); *Hale v. Henkel*, 201 U.S. 43 (1906) (Corporations get 4th Amendment search and seizure protection); *Armour Packing Co. v. U.S.*, 209 U.S. 56 (1908) (Corporations get 6th Amendment right to jury trial in a criminal case and a corporate defendant is considered the accused for 6th Amendment purposes.); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (Corporations entitled to 5th Amendment takings clause protection. A regulation is deemed a taking.).
[17] No. 65212-5-I (2011), citing, *Dutch Village Mall v. Pelletti*, No. 65209-5-I (2011).

recognized a corporation as an "artificial entity" that required legal representation. The sole proprietor of the corporation was trying to appear *pro se* as attorney for the corporation. The court found that this would be the unauthorized practice of law.

Corporate Campaign Finance - First Amendment Rights

The historical progression of corporate personhood quite clearly signaled the current state of the law in regard to free speech and campaign finance by corporations even though court decisions had recognized a distinction between the First Amendment rights of persons and corporations, as well as the disproportionate spending abilities of corporations.

The basic framework for campaign finance jurisprudence was based on *Buckley v. Valeo*.[18] This case involved the constitutionality of the Federal Election Campaign Act of 1971 (FECA) that established limits on both direct contributions and independent campaign-related expenditures. The court held that the expenditure of money was a form of speech protected by the First Amendment because it is essential to "the ability of candidates, citizens, and associations to engage in protected political expression."[19] This holding meant that the FECA would be subject to strict scrutiny - a showing of a compelling governmental interest and the least restrictive means of achieving the interest.

A split court found that the FECA limitations on direct contributions to candidates were constitutional because the government had a compelling interest in limiting the actuality and appearance of corruption resulting from large individual contributions and there were no effective lesser means of addressing the issue. Other provisions of the act did not fare as well.

The provision limiting expenditure by individuals acting independently from candidates was struck down for lack of a compelling interest given the complete independence of the contributions from candidate control and the lessened likelihood of *quid-pro-quo*. Similarly, the court rejected limitations on spending of a candidates personal or family funds because candidates had a First Amendment right to advocate for their own election. Similarly, the court struck limitations on what a candidate could spend from all sources combined.

The *Buckley* decision only considered restrictions placed on natural persons. After *Buckley*, federal law maintained similar spending restrictions on corporations under the

[18] 424 U.S.1 (1976).
[19] Id. at 59.

artificial person theory.[20] A major exception to the court's use of the artificial person theory, however, was *First National Bank of Boston v. Bellotti*.[21]

Bellotti involved a state limitation on a corporation's ability to spend money on advertisements related to ballot referendums. The court was careful to distinguish this case from spending on candidates with an implied corporate purchase of political influence. As a result, *Bellotti* was distinguished during the subsequent *Austin* and *McConnell* [22]cases which dealt with elections to representative offices. While declining to consider whether corporations always have First Amendment rights, *Bellotti* rejected distinctions between corporate and individual rights and focused on the First Amendment rights of the listener. Justice Powell reasoned that "[t]he inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation . . . or individual."[23] The dissent by Justices White, Brennan, Marshall stated that ". . . the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only our economy but the very heart of our democracy, the electoral process . . . The State need not allow its own creation to consume it."[24] Rehnquist also dissented, stating that "The blessings of perpetual life and limited liability . . . so beneficial in the economic sphere, pose special dangers in the political sphere."

Citizens United v. FEC

Until the U.S. Supreme Court decision in *Citizens United v. FEC*[25], the logic used by the majority in *Bellotti* did not extend beyond its narrow context. In the lead-up to the 2008 presidential election, Citizens United, a non-profit corporation, produced a 90-minute documentary entitled *Hillary: The Movie*. The film criticized Hillary Clinton at a time when she was the top contender in the Presidential Democratic primary. Citizens United intended to show the film by purchasing airtime to run the video using video-on-demand technology.

Section 203 of the 2002 Bipartisan Campaign Reform Act (popularly known as "McCain-Feingold") prohibited corporations from using their general treasury funds to fund "electioneering communications" in the 30 days before a primary and the 60 days before a general election. In the Act, "electioneering communications" were defined as broadcast advertisements that expressly advocate the election or defeat of a candidate for federal office and target a significant portion of the relevant electorate. Citizens United filed an as-applied challenge against Section 203 seeking declaratory and

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[20] See, *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990) (Upholding state restriction on corporations using general treasury funds to finance independent advocacy for candidates); *McConnell v. FEC*, 540 U.S. 93 (2003) (Upholding most provisions of McCain-Feingold campaign reform law.).

[21] 435 U.S. 765 (1978).

[22] See Note 20.

[23] *Bellotti* at 777.

[24] Note the dissent reliance on the artificial person theory. While not explicitly stating so, the majority opinion is more consistent with the natural person theory.

[25] 558 U.S. 08-205 (2010).

injunctive relief holding that *Hillary: The Movie* could not be constitutionally classified as an electioneering communication. The Court held that the case could not be resolved on this narrow as-applied ground without chilling free speech.

In the 5-4 opinion written by Justice Kennedy, the Court broadly held that: (1) no distinction can be drawn between the First Amendment rights of individuals and corporations in the electoral context[26], and that (2) "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Accordingly, the Court overruled *Austin* and part of *McConnell*, and invalidated all state and federal laws preventing corporations from using general treasury funds for political spending or otherwise regulating corporate independent electioneering expenditures.

Justice Kennedy found that the Government has "muffle[d] the voices that best represent the most significant segments of the economy." and "the electorate [has been] deprived of information, knowledge and opinion vital to its function." He found an insufficient governmental interest justifying limits on the political speech of nonprofit or for-profit corporations. Finally, the Court upheld the disclaimer and disclosure portions of the Act as the least restrictive alternative to the more comprehensive speech regulations.

Justice Stevens[27] penned a dissent finding that:

> "The Framers thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind."
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> "At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt."

The Court did not need to address a number of questions of interest such as: Are labor unions as free as corporations in the electoral context? (the language in Note 26

[26] Citing *Bellottii*, the majority claimed that "the Court has thus rejected the argument the political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons'."

[27] Joined by Justice Ginsburg, Justice Breyer, and Justice Sotomayor.

appears to indicate that they might be); and Are foreign corporations with operations in the U.S. entitled to the same protections?

State Campaign Finance Laws

Twenty-four states have laws limiting[28] or prohibiting[29] corporate electioneering. All of these state laws are subject to the ruling in *Citizens United* and are invalid to the degree that they violate the First Amendment rights of corporations. In Washington, the state generally treats corporations as natural persons. For example, the Washington State Constitution provides that:

> The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

Washington State Constitution, Article 12, §5.

The Washington Business Corporations Act also establishes that corporations have many of the same rights and powers as natural persons.

RCW 23B.01.400
Definitions.

> Unless the context clearly requires otherwise, the definitions in this section apply throughout this title. . . (22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

RCW 23B.03.020
General powers.

> (2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all

[28] Alabama Code 10-2A-70, 70.2; New York Election Law 14-116.

[29] Alaska Statutes 15.13.074(f); Arizona Const. art. XIV, Rev. Statutes 16-919, -920; Colorado Const. XXVII, §3(4)(a); Connecticut Gen. Statutes 9-613(a); Iowa Code 68A.503; Kentucky Rev. Statutes 121.150(20); Massachusetts Gen. L. ch. 55, §8; Michigan C.L.S. 169.254(1); Minnesota Statutes 211B.15; Montana Code 13-35-227; North Carolina Gen. Statutes 163-278.15, -19; North Dakota Cent. Code 16.1-08.1-03.3; Ohio Rev. Code 3599.03(A)(1); Oklahoma Statutes title 21 §187.2, chap. 62 appx. 257: 10-1-2(d); Pennsylvania 25 Pa Statutes 3253(a); Rhode Island General Laws 17-25-10.1(h) and (j); South Dakota Codified Laws 12-27-18; Tennessee Code 2-19-132; Texas Elec. Code 253.094; West Virginia Code 3-8-8; Wisconsin Statutes 11.38; Wyoming Statutes 22-25-102(a).

> things necessary or convenient to carry out its business and affairs, including without limitation, power: . . .
>
> (p) To transact any lawful business that will aid governmental policy; and
>
> (q) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

More specifically Washington campaign disclosure and contribution statutes[30] define and treat corporations as persons.

RCW 42.17A.005
Definitions. *(Effective January 1, 2012.)*

> The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. . . .
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> (35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

Instead of restricting campaign expenditures by corporations, the Washington statutes focus on the disclosure of contribution information. The *Citizens United* court clearly stated that disclosure and disclaimer provisions were a least restrictive alternative that met constitutional muster.

RCW 42.17A.320
Identification of sponsor -- Exemptions. *(Effective January 1, 2012.)*

> (4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five

[30] Chapter42.17A RCW.

> persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.
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> (5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)." If the independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

So, the *Citizens United* case should present no adverse consequences for the state of Washington.

State Responses to Citizens United

During the 2010 legislative session, SJM 8077[31] was introduced.[32] It urged the President and Congress to adopt an amendment to the United States Constitution providing that corporations are not persons. This Memorial was heard by the Senate Judiciary Committee, but was not passed. A number of other states have considered state legislation on this issue.

Connecticut proposed bill 9735

> That the general statutes be amended to require as a condition of being permitted corporate recognition in Connecticut, including the right to act as a non-Connecticut corporation within Connecticut, that a corporation must agree that neither that corporation nor any related corporate entity nor any person nor entity acting on the corporation's behalf will use any

[31] HJM 4005 was the House companion that was referred to House Judiciary Committee, but was not considered.
[32] http://wsldocs/2011-12/Pdf/Bills/Senate%20Joint%20Memorials/8007-Corporations.pdf

corporate money for television, radio, print, mail or internet communication to influence any election, referendum or public policy decision in Connecticut.

Wisconsin proposed Senate Bill 67

SECTION 6. 11.38 (3e) of the statutes is created to read:

11.38 **(3e)** (a) As a part of its registration, each corporation or cooperative association organized under ch. 185 or 193 that wishes to make disbursements or to incur obligations to make disbursements for the purpose of influencing an election for state or local office during a period when a finding of unenforceability under sub. (9) is in effect shall provide a copy of a document that is satisfactory to the board, reflecting action taken not more than 2 years previous to the time that any disbursement is made or any obligation to make a disbursement is incurred, demonstrating that the corporation or association has received the approval of a majority of the voting shares or members who are entitled to elect the board of directors for the corporation or association to make disbursements and incur obligations to make disbursements in elections for state or local office in this state or a statement that the corporation or association has no shareholders or members. No corporation or cooperative association organized under ch. 185 or 193 may make any disbursement or incur any obligation to make a disbursement, directly or indirectly, or through any political party, committee candidate, or individual for the purpose of influencing an election for state or local office unless the corporation or association has a current statement under this subsection on file with the appropriate filing officer and the statement is accurate.

(b) No owner, officer, employee, or agent of a corporation or cooperative association organized under ch. 185 or 193 may cause or authorize the corporation or association to make a disbursement or to incur an obligation in violation of this subsection. If such an owner, officer, employee or agent causes or authorizes a violation of this subsection, action for the violation shall be brought against the owner, officer, employee, or agent personally and the corporation or association is not financially liable for the violation. No such corporation or association may reimburse an owner, officer, employee, or agent for any financial liability incurred by the owner, officer, employee, or agent under this subsection.

SECTION 7m. 11.38 (9) of the statutes is created to read:

11.38 **(9)** If a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable for constitutional reasons, or if any such court later finds in a reported decision that such a prohibition is enforceable, the board shall promptly publish a finding to that effect in the Wisconsin Administrative Register.

Hawaii[33] introduced more detailed reporting requirements for campaign expenditures by corporations and individuals similar to Washington's. A number of states introduced resolutions similar to Washington Legislature's SJR 8077.[34] Only Maryland has successfully passed a resolution asking the President and Congress to adopt an amendment to the United States Constitution providing that corporations are not persons.

Conclusions

Washington's election statutes appear not to violate the First Amendment rights of corporations, recognized in *Citizens United*, because Washington state only requires reporting and disclosure. While this may be so, the broader issue of whether corporations should be treated as natural persons remains a national political issue if no longer a constitutional one. Arguably, any distinction between actual human beings and corporations in the First Amendment context has been eliminated (as they have been previously for the Fourth, Fifth, and Sixth Amendments). The Washington State Constitution and several statutes, outside the election law realm, also treat them as such for purposes of corporate liability and management.

Many states have responded with proposals to amend the U.S. Constitution to define human beings, but only one state (Maryland) has successfully passed a call for an amendment. The second part of the *Citizens United* decision - holding that corporate expenditures do not give rise to corruption or the appearance of corruption - has been left conspicuously unscrutinized. There also remain issues regarding the court's use of the phrase "or other associations" - to what other associations was the Court referring? Perhaps these are questions that the Court can clarify on other days and with other cases.

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[33] Hawaii HB 1627 (pending);

[34] Hawaii SCR 38 (in committee); Hawaii SR 16 (in committee); Hawaii HCR 51 (in committee); Kentucky HR 14 (failed); Kentucky SR 107 (failed); Massachusetts S 772; Maryland SJR 4 (passed); Montana D 50 (failed);Montana D 2067 (failed); Montana HJR 10 (failed); New Hampshire HCR 1 (failed); New Hampshire HR 8 (failed); New Jersey AR 64 (pending); New Mexico HM 7 (failed); New Mexico HJM 36 (failed); New Mexico HJM 32 (failed); New Mexico HM 35 (failed); Oregon HJM 9 (failed); Rhode Island H 6156 (pending); Texas HCR 91 (failed); Vermont SJR 11 (pending).