

Testimony of the Wisconsin Democracy Campaign on Senate Bill 540

Senate Committee on Labor, Elections and Urban Affairs

March 10, 2010

Thank you for holding this public hearing on Senate Bill 540. With the addition of Senate Amendment 2 offered by the author, the Wisconsin Democracy Campaign wholeheartedly supports SB 540. This legislation is one needed countermeasure to the U.S. Supreme Court's January 21 ruling on election financing in *Citizens United v. Federal Election Commission*.

We live at a time of corporate power and political influence not seen in this country since the Gilded Age and the days of the robber barons. We have just witnessed the recklessness and irresponsibility in the banking industry and on Wall Street bring our economy to its knees. And with the wounds inflicted on tens of millions of Americans still fresh, the Supreme Court decided that corporations do not have enough influence over our lives and our democracy and need to be allowed to spend even more freely on elections.

Some have wrongly claimed that the court granted corporations free speech rights and gave them a voice in the political arena. That is incorrect. Corporations did not need this court to give them a voice. They already had a voice, and a dominant one at that. Corporations already were free to form political action committees to make contributions and sponsor their own campaign advertising in the form of independent expenditures. And corporate managers already were free to make campaign contributions, and public records show they have donated exceedingly large quantities. This court did not give corporations a voice. It gave them a megaphone.

The court's ruling in *Citizens United* is based on and is a dramatic expansion of two pseudo-legal doctrines: that money is speech and that corporations are people. The idea that corporations have the same rights as living, breathing, flesh-and-blood citizens does not owe its origins to the U.S. Constitution. The word "corporation" does not appear in the First Amendment. It does not appear anywhere in the Bill of Rights. As a matter of fact, it does not appear even one time in the entire U.S. Constitution.

The idea that corporations are people did not originate from an act of Congress. No law has been passed in the entire history of our nation by the elected representatives of the people defining corporations as citizens. Nor was it a ruling of the Supreme Court where the idea of corporate personhood originated. It was the act of a single man. Bancroft Davis.

Bancroft Davis was a former executive of a railroad company who went on to become the court reporter for the United States Supreme Court. In an 1886 case involving the taxation of railroad property, *Santa Clara County v. Southern Pacific Railroad*, Davis added a note to the court's ruling saying that it was the court's view that corporations have rights as citizens under the 14th Amendment. None of the justices had addressed the question of corporate citizenship rights in their decision. But the doctrine of corporate personhood was born, thanks to Bancroft Davis.

In a profound demonstration of judicial activism and legislating from the bench, the current court majority's *Citizens United* decision builds on this fabricated doctrine to dramatically expand the capacity of corporations to influence elections. This not only has profound implications for our democracy and for the rights of living persons, but the ruling also tips the scales of corporate governance in a way that is highly detrimental to those who supply corporations with their capital – the shareholders.

Not only do ordinary citizens have every reason to be alarmed by the court's radical reinterpretation of the First Amendment and its drastic expansion of corporate power over elections, but it is becoming increasingly clear that stakeholders in private enterprise and the finance sectors of our economy are uneasy about what the court has wrought. Articles like one that appeared in the *Wall Street Journal* recently – headlined “Will the Citizens United Ruling Prove Harmful to Capitalism?” – are cropping up around the country. The article's main point? That a ruling strengthening the ability of corporations to influence politics “can actually serve to *weaken* the rights of shareholders.”

Senate Bill 540 is needed to protect shareholder rights, to ensure they are notified of and given a say over how their money is used for political purposes.

This issue should not be partisan because the public's reaction to the *Citizens United* decision has been anything but partisan. Numerous national polls conducted in the wake of the ruling by news organizations and survey research firms show widespread public opposition to the decision that cuts strongly across party lines. One such poll, conducted by ABC News and the Washington Post, found that 80% of Americans oppose the ruling. That opposition spanned the ideological spectrum, with 85% of Democrats, 76% of Republicans and 81% of independents saying they oppose the Supreme Court's decision.

A similar supermajority of citizens supports action by elected officials to reinstate limits on corporate spending on elections. Nearly three-quarters of Americans – 72% – want elected lawmakers to undo the damage done by the court ruling. Support for aggressive legislative countermeasures also crossed party lines, with 77% of Democrats, 71% of Republicans and 71% of independents favoring strong legislative action.

Senate Bill 540 represents one of the needed countermeasures to the *Citizens United* decision. More robust disclosure of political spending also is needed, and disclosure remains on sound constitutional footing as eight of the nine justices upheld disclosure in *Citizens United*. Two days before the court ruled, the Senate acted on and passed Senate Bill 43, which would enhance disclosure of interest group spending on elections and require sponsors of advertising to stand by their ads. More work is needed on SB 43 in light of the recent Supreme Court decision, but the Senate can and should move forward with this legislation and make sure it gets to the governor's desk.

Public financing of elections also remains on sound footing constitutionally and thus is a viable and particularly promising option for lawmakers to consider. We urge you to act on multiple fronts to help repair the damage that the Supreme Court has done.

The court has spoken. The question is whether this will be the last word. The ball is in your court. The public needs you to forcefully respond to the court's assault on our democracy. Senate Bill 540 should be one part of that response.

Thank you once again for holding this hearing.