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STATE REPRESENTATIVE
DISTRICT 20



HOUSE OF REPRESENTATIVES

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House Committee on Judiciary
Oregon House of Representatives
900 Court Street SE
Salem, Oregon 97301

House Bill 3385

Chair Barker, Vice Chairs Olson and Williamson, Members of the Judiciary Committee.

Thank you for allowing me to share with you some thoughts about House Bill 3385. It is a bill offered as a solution to a problem intensified by recent court opinions relating to corporate personhood.

For the record, I am Representative Paul Evans: elected to serve the people of Independence, Monmouth, South and West Salem – I reside at 744 Main Street East, Monmouth, Oregon 97361.

I appear before you today as a small business owner; the son and grandson of small business owners. This bill outlines one approach; it also provides insight about an alternative remedy.

The problem – reaffirmed through the recent Citizens United v. Federal Elections Commission – is that we are now witness to a near repeat of the “separate but equal”- some persons are more equal than other persons a past cause of widespread chaos and confusion.

To demonstrate this problem and a plausible solution, House Bill 3385 was introduced to provide a path for reconciliation.

In simplest terms, House Bill 3385 would – if enacted – allow corporations to serve as jurors. It provides fairness for those denied the opportunities other persons now enjoy. It is a way to reconcile the separate and unequal standards that now deny corporate persons access to a jury of their peers.

In Citizens United the US Supreme Court upheld and expanded previous rulings associated with political speech. The Court reaffirmed 1st Amendment protections for corporations as well as outlining the reasons Congressional constraints upon PACs sustained through corporate finances were unconstitutional and a form of “censorship.”

This decision however did far more than affirm the “rights” of a corporation to access and exercise political speech on behalf of the persons affiliated with the entity. It affirmed the essential nature of the corporate entity as a person itself – assuming independent, corporate-minded speech for its own sake along with other inherent expectations of protected rights.

In the majority opinion the court concluded that, “... Corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the First Amendment seeks to foster.” The court rejected, “... the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not ‘natural persons.’” (Citizens United v. Federal Election Commission)

Although the court hinted at distinctions between natural persons and others, the decision affirmed the equality of all citizens under the law: some analysis claim the decision set into legal precedent an “absolute personhood” standard for corporations. It is worth noting that citizenship through birth or naturalization has long been understood to be the domain of persons (natural) meeting certain and specific criteria. However, the law now recognizes little legal difference between natural persons and the entities established by persons for purpose.

The language of the decision suggests that in time corporate persons may or will have every expectation for rights far beyond speech for political purposes and/or protections under the law as individuals. It sets the stage for corporate persons with all the rights of natural persons without the burdens of mortality. These things happen through incremental expansions: decisions providing the justification for future decisions that expand the scale and scope. Built upon the rock or sand, the superstructure of personhood appears to be a work in-progress.

In his concurring opinion Chief Justice Roberts wrote, “... Fidelity to precedent – the policy of stare decisis – is vital to the proper exercise of judicial function. ‘Stare decisis’ is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process...” (Citizens United v. Federal Election Commission)

This discussion of personhood is central to our purposes today: I ask for consideration of this bill as a rational, reasonable extension of existing precedent because of our responsibilities to the principles of the 14th Amendment to the US Constitution. After all, it is – and was – through the 14th Amendment we justified national expectations for civil liberties and individual justice. Turning our back upon that experience is neither advisable nor sustainable: once personhood manifests it is our responsibility to assist as well as comply.

The 14th Amendment to the US Constitution established that, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” (Section 1.)

This amendment means that US Citizens are entitled to rights within the States and conversely, that persons understood by States to be citizens are entitled to the full-spectrum of rights afforded to US Citizens

Most of us are familiar with the arduous, tortured path to personhood suffered by corporations. From the notes scribbled by a clerk on the opinion of the Santa Clara County case of 1886 through the precedents determined in the early part of the 20th Century, corporations have come to depend upon an evolutionary expansion of protections associated with constructed personhood; it is a shield used for defending corporate actions from laws established to regulate labor and wage standards, environmental oversight, and financial accountability.

We are now far removed from the origin of corporate organization understood by our Founders. James Wilson, a Pennsylvania Delegate that signed the Declaration of Independence, represented the commonwealth in the Continental Congress, and helped write the US Constitution wrote at the time, “... A corporation is described to be a person in a political capacity created by the law, to endure in perpetual succession... It must be admitted, however, that in too many instances, those bodies politick have, in their progress, counteracted the design of their original formation... This is not mentioned with a view to insinuate, that such establishments ought to be prevented or destroyed: I mean only to intimate, that they should be erected with caution, and inspected with care.” (Clements, 2014)

In Federalist #10 Madison outlined the inherent dangers of factions; factions as amalgamations of resources or politically concentrated powers. It was understood that corporations – precisely because of their perpetuity were to be viewed as instruments of persons, not persons absent legal or political necessities. Once upon a time not that long ago charters were a public writ of authority providing for limited legal arrangements to facilitate profit-making partnership for the development of the society have evolved into immortal legal constructions that often operate without regard for local concerns.

In 1818 author Mary Shelley created in Frankenstein a being from human parts. The creature existed: of human construction but without human perspective. In similar fashion corporations are constructs reflecting aspects of human nature absent the essential spark, spirit – or soul – that defines our human experience. Ironically, that humanity often causes us to manifest contradictory notions concurrently; corporations in contrast are generally crafted for singular purpose: profitability.

American economist Milton Friedman described corporate nature this way, “... There is one and only one social responsibility of business – to use its resources and engage in activities that increase its profits.” (New York Times Magazine, September 1970) This profit-motive has evolved with the aid of technology and time, into a global pursuit beyond the reach of national boundaries as well as societal norms.

What began as chartered interests fostering economic growth as a result of the pursuit of self-interest has become pursuit of self-interest by and for the corporation. This fundamental transformation of the form and function of the corporation has put the business community at odds – with itself.

Small enterprises have little in common with transnational conglomerates: the liquidity of currency has driven “Free Market Economics” off the map and into uncharted territory. We are living in an age where big corporations have demonstrated an ability to optimize personhood as a shield from responsibility rather than an engine for US economic and societal development.

In his dissent to the Citizens United decision, Justice Stevens wrote, “Corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their ‘personhood’ often serves as a useful legal fiction. But they are not themselves members of ‘We the People’ by whom and for whom our Constitution was established.”

This traditional view of corporations suggests that corporations are neither inherently bad nor good, but rather instruments of the breathing, human persons that facilitate economic activities through the useful legal fictions necessary for sustaining commerce. In other words, Stevens would posit that corporations are less person, than a partnership for or by persons. I happen to agree with Justice Stevens: corporations are tools; corporations are not mortal beings – corporations are legal constructs nothing less or more.

Whatever our opinions, the courts have ruled and precedent reigns. Mortality is now irrelevant when considering the rights and responsibilities of personhood; legal characterization and history – matter most. Corporations can be immortal; immortal persons with rights absent responsibilities – persons that exist beyond the realm of certain and specific consequences associated with behavior or will.

Citizen United focused primarily upon political speech; it did not limit the expectations of personhood only to speech. But the court established a far more comprehensive measure: an expectation of corporate persons to exercise all the rights of natural persons.

In this new era where corporate personhood is an assumption we are required to reconsider some of the most basic truths: the roles of persons in a free state – and the distribution of duties.

If corporations are persons, then state law must secure that personhood in rights and responsibilities.

The courts have determined through precedent that corporate persons are persons – with the same expectations of rights as all other persons under the US Constitution.

Therefore, the State of Oregon must reform our laws in such a manner that provides corporate persons with the full spectrum of rights afforded to all others.

Existing Oregon Revised Statutes define a “person” in several ways. The most comprehensive description is, “... an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, subdivision, agency, or instrumentality, public corporation or any other legal or commercial entity.” (ORS 174.100)

Despite a distinction within our statutes of “natural” person there appears to be no specific recognition of corporate persons with regard to service as jurors. This is a problem given the expectations of rights secured by the 14th Amendment. The law is silent on how corporate persons enjoy full access to rights including protection from unwarranted search and seizure, a fair and speedy trial, and security against cruel and unusual punishment when corporate persons are denied the right to a jury of peers.

In time I hope to offer additional legislative concepts as remedy to the glaring insufficiencies of existing statutes with regard to corporate persons. So long as the law recognizes corporate persons as persons deserving all the rights of persons, we must seek remedy for the lack of corporate rights to stand trial for criminal behaviors – as all other persons can; for the lack of opportunities to serve and be registered to serve in our armed forces; and to exercise the franchise – to vote.

Not that long ago lawyers defended the precedents established by Dred Scott, Plessy v. Ferguson, the others that constrained our understanding of civil liberties and equality. In time our nation challenged the underlying fallacies and advanced the cause of freedom. However, the power of precedent shall continue to evolve the personhood of corporations unless or until the underlying assumptions – the rationality of the potential irrationality of granted life to the lifeless are replaced.

Colleagues, I believe we are faced with two clear alternatives: 1) adherence to existing precedent that will require us to implement legislation such as House Bill 3385 in order to secure due process and equality demanded of our 14th Amendment; or 2) meaningful dialogue across the partisan divide in the pursuit of a more responsible legal arrangement: an arrangement that values both individual as well as corporate rights but as different, distinct kinds of entities – with certain and specific purpose and scope.

Option 1 – demands that we take action to implement laws, policies, and procedures consistent with securing rights for all persons identified as persons under the law.

Option 2 – demands that we differentiate between natural persons – defined by mortality as well as the human condition from what are essentially “zombies” – creatures with agency but absent mortal concerns as well as human perspective.

Corporate structures are an essential part of the modern world. The greater question before us is whether we accept corporate persons as the evolution of the human condition or whether we realign our understandings of partnerships for purpose and reform our laws to recognize utility absent personhood status.

In the award winning movie “Lincoln” our sixteenth President is shown to have illustrated his struggle with equality of the races through an explanation of Euclid’s First Common Notion. Daniel Day Lewis depicted a war-weary Commander-in-Chief renewing his commitment to seeking the 13th Amendment prior to cessation of hostilities because of his acceptance that, “... things that are equal to the same thing are equal to each other...”

This is the reality of our time: corporate persons are equal to natural persons so long as we allow it so.

With respect to Orwell, existing precedent is blind to the differences in perspective held by immortal legal constructs and mortal beings. In turn, we are now witness to an era where some persons appear to be more equal than other persons. As legislators it is up to us to determine whether a democratic society can long withstand the potential schisms likely associated with a body politic divided by such elemental differences as immortality – or conscience.

Respectfully,



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District 20