

TO: Representatives Michael Dembrow and Paul Holvey  
FROM: Kirk Leonard  
SUBJECT: April 10 ACLU of Oregon testimony  
DATE: April 29, 2013

On close examination, the April 10 Rules Committee testimony submitted by Ms Straus of ACLU makes arguments that are breathtakingly vague and overreaching, at times misleading. It's very much "trust me" testimony and must be challenged.

For example, this assertion is simply untrue: "Each of these amendments are very likely to have consequences beyond the scope of their intent and the ACLU is opposed to any amendment to the Constitution that would undermine protections for freedom of expression, association and the right to petition government for redress of grievances." HJM 6 does nothing to undermine freedom of expression, association and the right to petition. It certainly does not repeal the 1<sup>st</sup> Amendment, which is the implication here. These rights will be strengthened for individuals by the proposed amendment, by reducing the power and influence of corporations on our legislative and electoral processes, thereby enhancing the impact of individual citizens and the organizations with which they have a genuine, voluntary association, including ACLU.

She repeats the false assertion that the amendment, "by undermining the First Amendment," is unacceptable and damages those rights. On the contrary, the proposed amendment strengthens the 1<sup>st</sup> Amendment rights of natural persons while removing them for "artificial persons" – statutory entities.

"Unintended consequences" is a recurring theme in ACLU arguments nationally, as it is for many lawyers who argue against the proposed amendment. Most legislation is susceptible to unintended consequences and is subsequently improved as those consequences emerge. The same is true of constitutional provisions, and it will be true when this amendment is adopted. "Fear of the unknown" is always present in cautious minds but it is no reason not to act when the known consequences have such a massive, negative impact on society.

Who would have suspected, given the founders' clear intentions, as expressed in the Federalist papers, and the absence of any mention of corporations in the Constitution, that they would have been granted sweeping constitutional rights over time?

Her assertion that "if a corporation is denied constitutional rights, the government would not need a search warrant to search the records of corporations that hold very private information about Americans" ignores the many Supreme Court decisions and laws that would prevent this from happening. NAACP v. Alabama (1958), which was cited at the hearing, is one such case where the protection of individual rights takes precedence.

The same "web of law" – the Bill of Rights, statutory laws, case law, administrative rules – that protects individuals in the latter case applies to the entire notion that 1<sup>st</sup> Amendment rights will not be affected by the proposed amendment, except those inappropriately granted to corporations.

Ms Straus clearly accepts that "corporations are people" and that laws effectively made by the Supreme Court are constitutional because the court says so. When she asserts..."stricter limits on contributions and expenditures are not the answer. Not only are they unconstitutional,..." she is clearly ignoring the point of the proposed amendment, which is to force the court not to strike down legislation addressing these important elements of rational regulation of political spending.

In closing, she asserts "...[the amendments] actually risk resulting in a less egalitarian and more corrupt system of campaign financing," which requires a major stretch of the imagination. As with all the assertions she makes, she does not provide sufficient information to either explain what she

means or support it with examples.