To the ACLU: Granting Bill of Rights Protections to Corporations Undermines Citizens' Rights

By ReclaimDemocracy.org staff and volunteers

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On April 20, 2010, the ACLU announced asignificant shift in its absolutist "money = speech" stance when it comes to investing in political candidates and parties. The ACLU board voted 36-30 to approve "reasonable limits on campaign contributions to candidates" and spending limits as a condition of voluntary public financing.

We applaud this step forward, but the board failed to address the glaring need to reform its advocacy for granting corporations the status of human beings and bestowing Bill of Rights protections upon them. Over the past eight years we've collected 4000 endorsements and have been copied on more than 100 letters by individuals to the ACLU on this topic, but it wasn't until early 2010 that the media (Alternet and NY Sun) started reporting on the internal debate we've been working to provoke for so long.

In the wake of the *Citizens United v FEC* decision, we updated a letter we first wrote and submitted to the ACLU during the 2003 Nike v Kasky Supreme Court battle, when the ACLU supported Nike Inc.'s arguments for a corporate right to lie. Unfortunately, nothing has changed on this front. The ACLU submitted a brief to the Supreme Court in *Citizens United*, arguing to overturn decades-old precedent limiting the power of corporations to spend company funds in efforts to elect or defeat specific candidates.

Dear ACLU Board of Directors,

For 90 years the work done by the American Civil Liberties Union has been of immeasurable value in protecting and extending freedom and democracy. Perhaps your greatest contribution has been in advocacy of First Amendment rights. Few people realize the crucial role the ACLU has played in establishing the free speech protections many Americans mistakenly believe have existed since our nation's founding.

The ACLU's current position of advocating "free speech rights" for corporations is ironic, given your historic role. Your position is undermining democracy rather than strengthening it. We ask you, the leaders of the ACLU, to rethink your support of corporate "free speech," as evidenced by the ACLU of Northern California's amicus brief in *Citizens United v FEC*.

We believe citizens will never realize the promise of democracy unless we can assert our right to control the activities of the enormous, unaccountable institutions we know as corporations. These institutions have no voice, but they have become instruments by which the powerful few drown out the voices of many citizens.

In an amicus brief supporting corporate political speech in an earlier case (*Kasky v. Nike*), the Northern California ACLU cites a Supreme Court precedent: "The First Amendment presupposes that the freedom to speak one's mind is not only an aspect of individual liberty – and thus a good unto itself – but also is essential to the common quest for truth and the vitality of society as a whole."

Just whose “mind” is referenced in the case of a corporation? Given the counter-Constitutional history of corporate personification, it’s easy to forget the commercial corporation has no voice and has but one purpose–to maximize profits. *By necessity all corporate communication is commercial*. Corporate executives are under a legal obligation to adhere to that purpose regardless of their personal inclinations to act for the greater good.

The ACLU has claimed supporting corporate “free speech” is merely acting in support of democratic principles: “If the American people are to be the masters of their fate and of their elected government, they must be well-informed and have access to all information, ideas and points of view.” The Supreme Court used similar language in 1978 (*First National Bank of Boston v. Bellotti*) to assert broadly construed corporate speech rights. But even then the Court noted, “corporations are wealthy and powerful and their views may drown out other points of view,” and if it could be established “that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests, these arguments would merit our consideration.” Can any reasonable person deny that runaway corporate power now is undermining democracy?

As justices White, Brennan and Marshall pointed out in their dissent to *Bellotti*, the threat to First Amendment interests already was clear: “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 the economy but also the very heart of our democracy, the electoral process.” They recognized restricting corporate communication was necessary because “The State need not permit its own creation to consume it.”

Perhaps corporate power over the democratic process was not so obvious to some observers 30 years ago, but today it is unmistakable. By 1990 even the majority of the Supreme Court conceded, in *Austin v. Michigan Chamber of Commerce* (overruled in *Citizens United v FEC*), “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.” Today corporations have their lawyers in Congressional committee rooms drafting legislation.

The problem goes much deeper than political corruption. In asserting corporate “rights,” the ACLU is not really shielding private parties from government repression. The large corporation is itself a governing institution. As John Kenneth Gailbraith observed, the tradition of private enterprise serves “to disguise the essentially public character of the great corporation, including its private exercise of what is in fact a public power.”

If we allow a limited number of corporations to control the bulk of public communication, the forum for political debate will be one in which the publishers and those who can afford to advertise can choose to amplify ideas they find amenable (and then shepherd them into law via the conversion of money into political power). But when it comes to ideas threatening corporate power, corporations simply will (and already do) exercise their First Amendment “right” not to speak.

The ACLU has claimed denying speech “rights” to business corporations would also threaten the rights of the ACLU, other public interest groups and media entities. Yet the Supreme Court has been able to distinguish between general business corporations, non-profit advocacy groups and media companies. The Court stated explicitly in its rulings, including *FEC v. Massachusetts Citizens for Life,* that it can do so. Indeed it has declared such distinctions necessary to the basic functioning of democracy. In *FEC v. MCFL* the Court laid out the reason for protecting the speech of advocacy groups above that of business entities: *“MCFL*

was formed to disseminate political ideas, not to amass capital."

Unfortunately, the Court has not seen fit to follow through with its reasoning and reverse its decision in *Bellotti*. To be consistent with its founding purpose of ensuring individual rights and liberties, the ACLU should be working to secure such a reversal rather than helping corporations encroach still further on the democratic process.

We understand your reservations about the ACLU supporting any legislative limits on the First Amendment. Therefore, we invite you to join our call to amend the Constitution to clarify that the Bill of Rights is intended to apply to living beings, not their artificial creations.

Sincerely,

More than 4000 individuals and 90 organizations endorsing as of December, 2009