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CITIZENS GROUPS CONCERNED ABOUT CORPORATIONS AND DEMOCRACY FILE BRIEF IN SUPREME COURT TO UPHOLD RESTRICTIONS ON CORPORATE POLITICAL CAMPAIGN EXPENDITURES

Five organizations today joined to file a brief in the United States Supreme Court urging the Court not to overturn longstanding rules barring political expenditures by corporations. The *amicus curiae*, or "friend of the court," brief argues that the Court should not overturn state and federal laws that regulate corporate political expenditures because corporations do not have the same Constitutional rights as people. As such, democratically enacted regulations of corporations do not violate the Constitution's guarantee of free speech. A copy of the *amicus* brief can be read here: www.clementsllc.com.

In the case of *Citizens United v. Federal Election Commission*, No. 08-205, the Supreme Court is weighing whether free speech protections under the First Amendment prevent Congress from restricting corporate political campaign expenditures. The Court is considering overturning federal campaign regulations for corporations that were first enacted in 1907, and may soon overrule Supreme Court cases decided in 1990 and 2003 that agreed restrictions on corporate money in politics do not violate the Constitution.

The five organizations involved in educational and related efforts to combat undue and undemocratic corporate influence in politics and self-government include the Program on Corporations, Law and Democracy (www.poclad.org), the Women's International League for Peace & Freedom (www.wilpf.org), Democracy Unlimited of Humboldt County (www.duhc.org), Shays2: The Western Massachusetts Committee on Corporations & Democracy (www.shays2.org), and the Clements Foundation. The brief was drafted and filed by Jeff Clements and Clements Law Office, LLC (www.clementsllc.com) who represented the organizations in the matter.

"The notion that corporations have the same speech rights as people under our Bill of Rights is contrary to the words, history, spirit and intent of our Constitution," said Clements. "The organizations that joined to bring these arguments to the Court have worked effectively for many years to empower democratic self-government. They remind us that corporations do not vote, speak, or act as people do, but are products of government policy to achieve economic and charitable ends. As such, they need not be allowed to influence our elections if Congress and the State governments judge that such influence is detrimental to democracy."

The case now before the Court began when a tax-exempt non-profit corporation calling itself Citizens United, Inc. challenged the Constitutionality of a federal ban on expenditures for “electioneering communications” by corporations and labor unions within sixty days of an election. The ban is part of the federal Bipartisan Campaign Reform Act of 2002. Under the Act, corporations and labor unions may still contribute to Political Action Committees, which are permitted to make electioneering communications, unlike corporations.

Citizens United argued that the restrictions under the Bipartisan Campaign Reform Act violated the Constitution as applied to the non-profit corporation that sought to distribute an anti-Hillary Clinton movie during the 2008 presidential primaries in 2008. A panel of three federal district court judges upheld the regulation of corporate expenditures, and agreed that the Federal Election Commission could enforce the law. The District Court relied on a 2003 Supreme Court case, *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), that had ruled that the corporate expenditure regulation did not violate the free speech guarantees of the First Amendment. Citizens United appealed to the Supreme Court.

After hearing argument in March 2009, the Supreme Court did not decide the case before its term ended in June. Instead, on June 29, 2009 the Court issued an order stating that the Court would consider the case again after hearing argument as to whether the Court should overrule its holdings in *McConnell* and in a 1990 case, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990). *Austin* had ruled that federal and state legislatures do not violate the First Amendment in enacting laws governing corporate political activity.

If the Court overrules *Austin* and *McConnell*, First Amendment rights claimed by corporations will be significantly expanded, and local, state, and federal governments will be further restricted in the ability to regulate corporations and corporate influence on our democratic processes.
The *amicus* brief shows that corporations, as legal entities created by state or federal law for economic, charitable or other purposes, were never intended to be included within the Constitution's Bill of Rights. The brief also shows that overruling *Austin* and *McConnell*, and preventing state and federal governments from regulating corporate political activity, would be contrary to two centuries of Supreme Court case law. Finally, the brief highlights that the doctrine that corporations are “persons” under the due process and equal protection clauses of the Fourteenth Amendment is doubtful, and an activist federal judiciary should not intervene to prevent elected state governments from barring, if they chose, corporate political influence in state elections.

The Supreme Court will hear further argument in the case in September.