

# CITIZENS OVER CORPORATIONS

## A BRIEF HISTORY OF DEMOCRACY IN OHIO

by Greg Coleridge

**H**AVE CORPORATIONS BECOME too powerful? This is a relevant question during these times of rapid increase of corporate consolidations, movement of factories and money, lobbying and PAC contributions, tax breaks, and deregulation; of corporate internal regulation of pollution, involvement in health care, prisons, and education, and legal free speech and intellectual property protections.

With each passing day, corporations have a greater say in our lives: from the food we eat, to the products we buy, the health care we receive, the news we see, the ideas we think, the economic rules we follow, the entertainment we enjoy, the education we acquire, the laws we enact, the work we do, the politicians we elect, the policies we have, and the natural world we have left.

“Corporatization” of our society is not inevitable or irreversible. Corporations were not supposed to reign. The early history of the United States and of Ohio is of citizens clearly defining and closely controlling corporate behavior. It is a history that is outlined in the publication *Citizens over Corporations: A Brief History of Democracy in Ohio and Challenges to Freedom in the Future*, produced by the Ohio Committee on Corporations, Law and Democracy.

The American Revolution was not a revolution simply against a tax on tea or the King of England. It was also a revolution against the British “crown” corporations that ran the colonies—like the Massachusetts Bay Company, Maryland Company, Virginia Company and Carolina Company.

Following independence, the colonists transformed these corporations into constitutionalized states with elected representatives. From their experiences, the colonists knew to keep corporations on a short leash. Therefore, they entrusted the essential task of corporate control to the one group who was closest to the people—state legislators.

When Ohio became a state in 1803, the state legislature acting on behalf of the public used their power to create and define corporations. Early Ohio acts creating corporations one at a time stipulated rigid conditions. These privileges, not rights, included:

- Limited duration of charter or certificate of incorporation.
- Limitation on amount of land ownership.
- Limitation of amount of capitalization, or total investment of owners.
- Limitations of charter for a specific purpose (to amend its charter, a new corporation had to be formed).

And in keeping with a corporation's subordinate position to the state, the state reserved the right to amend the charters or to revoke them, and prohibited corporations from engaging in political activities.

In many instances, after a corporation built a turnpike and once the corporation recovered its costs and a fair profit, the charter or certificate of incorporation was dissolved and the turnpike became a public road. In other instances regarding turnpikes, the charter exempted the poor, voters, and church-goers from tolls.

A second way people exerted power and control over corporations through the Ohio legislature was by repealing all or a portion of a corporate charter of corporations which violated terms of their incorporation. From 1839-1849 the legislature effectively dissolved several enterprises. Turnpike corporations and banks were the most common targets; others included silk and insurance corporations.

In an 1842 act to repeal the charter of the German Bank of Wooster (40 Ohio Law 18), the state legislature stated:

It shall be the duty of the court of common pleas . . . or any judge of the supreme court . . . to restrain said bank, its officers, agents and servants or assignees, from exercising any corporate rights, privileges, and franchises whatever . . . and force the bank commissioners to close the bank and deliver full possession of the banking house, keys, books, papers, lands, tenements, goods, chattels, moneys, property and effects of said bank, of every kind and description whatever . . .

From the 1830s through the 1912 Constitutional Convention, the Ohio Supreme Court and various lower courts ruled

on hundreds of cases affirming the sovereign rights of people and their elected representatives to define corporations and their actions. Cases ranged from sweeping decisions on corporations in general to more specific decisions on an entire category of corporations (like railroads), and to very specific decisions addressing a particular corporation. Many decisions reinforced previously passed state laws or provisions of state constitutions. In *The state ex rel. Kohler v. Cincinnati W. & B. R. Co.*, the Ohio Supreme Court stated:

The corporation has received vitality from the state; it continues during its existence to be the creature of the state; must live subservient to its laws, and has such powers and franchises as those laws have bestowed upon it, and none others. As the state was not bound to create it in the first place, it is not bound to maintain it after having done so, if it violates the laws or public policy of the state, or misuses its franchises to oppress the citizens thereof.

State courts imposed penalties for abuse or misuse of the corporate charter that were often more severe than a simple plea bargain or fine. They included ousting the corporation of its claimed privileges to perform certain actions. The most severe penalty, common from the mid-1800s through the 1920s, was to revoke the corporate charter and dissolve the corporation itself. The legal device used to achieve these penalties was a *quo warranto* (literally, "by what authority") proceeding.

The most well-known *quo warranto* case in Ohio history, *The State ex rel. Attorney General v. Standard Oil Co.*, involved the efforts by two Republican Ohio attorneys general to revoke the corporate charter of the Standard Oil Company, the most powerful U.S. corporation

of the time, for forming a trust. In the 1892 argument to revoke its franchise Ohio Attorney General David Watson argued:

Where a corporation, either directly or indirectly, submits to the domination of an agency unknown to the statute, or identifies itself with and unites in carrying out an agreement whose performance is injurious to the public, it thereby offends against the law of its creation and forfeits all right to its franchises, and judgment of ouster should be entered against it.

In a 1900 ruling to dissolve a dairy company, *State ex rel. Monnett v. Capital City Dairy Co.*, the Ohio Supreme Court said:

The time has not yet arrived when the created is greater than the creator, and it still remains the duty of the courts to perform their office in the enforcement of the laws, no matter how ingenious the pretexts for their violation may be, nor the power of the violators in the commercial world. In the present case the acts of the defendant have been persistent, defiant and flagrant, and no other course is left to the court than to enter a judgment of ouster and to appoint trustees to wind up the business of the concern.

Corporations didn't take all this citizen self-governance and revocation business sitting down. Corporations fought back against legislative and judicial charter revocations and limitations, confronting the law at every point. They hired lawyers and created law firms. Corporations rewrote the laws governing their creation. They advocated replacing specific chartering rules with general incorporation laws (as Ohio did in 1842) with minimal reviews, perpetual life spans, limited liabilities, and decreased citizen authority. Judges redef-

ined "corporate profits" as property. The courts declared "corporate contracts" and the "rate of return on investment" as property. Judges and the legislature redefined the "common good" to mean corporate use of people and the earth to maximize production and profit.

In Ohio, laws and court cases favorable to corporations were passed and decided over a period of decades. If corporations couldn't get favorable treatment by the legislature, they focused their energies on the courts where they had a greater chance for success. The following story illustrates an extreme and ironic example of corporate power: corporations successfully revoking the charters of Ohio municipalities.

In 1902 the Ohio Supreme Court ousted, or dissolved, the Board of Control of the City of Cleveland. The people, city and its Board of Control, under the leadership of populist mayor Tom Johnson, sought to establish "three cent fares and universal transfers" for the city's street railways.

The regulations would have limited the power and profits of the street railway franchise owned by the wealthy and powerful corporate industrialist Mark Hanna. Hanna, a Republican, pressured the Republican state administration and Attorney General to file suit challenging the City of Cleveland's authority.

In a highly political decision and the only action like it in the nation, the state supreme court (several members of whom were pressured by Hanna and his friends) ruled against the City. The legal basis for the ruling was that Cleveland's existence, like all Ohio municipalities, was illegal since its charter was created years earlier by the Ohio General Assembly through a separate act (law). The incorporation of all municipalities at the time

had been created one at a time by such acts of the General Assembly. Nonetheless, the Ohio Supreme Court ruled that these incorporations were “special” legislation which had been ruled unconstitutional by the 1851 state Constitution. Only “general” acts applying to all types of corporations were permitted under the Constitution.

With all the charters of all the municipalities of Ohio now unconstitutional, the state legislature was forced to meet in a special session in the fall of 1902 to adopt a single municipal code. No longer would some cities have certain powers that others did not have.

Once again, Hanna and other corporate heads exerted their influence. They pushed through a municipal code, still in place today, based on the model of the City of Cincinnati—a city run by one of the most powerful political bosses in the nation, George B. Cox, a Republican.

The “federal plan” of concentrated power and responsibilities, on which the charters of Cleveland and Columbus were based, was replaced by the Cincinnati “board plan” of scattered responsibility. In other words, the strong city structure that had let Mayors like Tom Johnson challenge corporate power was substituted by a weak structure that made it hard to confront corporations directly.

With corporate profits, consolidations, tax breaks and political influence at or near record levels today, it is time to reexamine the fundamental relationship between citizens and corporations. Challenging corporate “rights” is a legitimate and essential task of self-governing people. The time has still not yet arrived when the created is greater than the creator. We Ohioans must learn our history and use it to rethink and reassess our actions today. What is left of our democracy is at stake. ■