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1. Frequently asked questions about corporate power:

1.1. WHY DO WE NEED LAWS TO REDUCE CORPORATE POWER IN MAINE?

Four reasons stand out among countless good ones:

--Small businesses--many of them incorporated and many not--form the backbone of Maine's economy, accounting for most of its economic growth over the past decade, and yet they struggle while large corporations with more capital get tax subsidies and breaks and use their political clout to gain other advantages. We need to give Maine's small businesses a fair chance.

--Publicly held corporations have just one legal mandate--to generate profit for the stockholders--and no commitment to the quality of life in Maine. If they can save shareholders the cost of dealing responsibly with their waste, then it becomes a burden on Maine taxpayers, as with Holtrachem's mercury pollution of Orrington soils and the Penobscot River. We need to protect Maine's taxpayers--and, most especially, the health of our children.

--In addition to vast financial power and limited liability for wrongdoing and debts, corporations have usurped the rights given to human beings by the U.S. Constitution. Together, these add up to literally superhuman powers to override government "by the people and for the people." We need to preserve democracy in Maine.

--Empowered through deals with the federal government and international trade agreements, large corporations are gaining powers that put them beyond the reach of state and local governments. For example, Methanex, a Canadian company that manufactures a primary component of the toxic gasoline additive MTBE, has sued the state of California under NAFTA rules for \$970 million in "lost revenues" because that state banned MTBE. Although MTBE, a possible carcinogen, has been found in drinking water in every Maine county, this lawsuit imperils the possibility of a similar ban here. Our state should not be bullied by foreign corporations. We need to protect the authority of our state and local governments to safeguard Maine's people and resources.

Our nation's founders were outspokenly wary of corporate power because they had just freed themselves from aristocratic rule and did not want similar conditions to return. Today's excessive corporate power fulfills their worst fears. It is a key issue locally, at the state and federal levels, and internationally--but it is at the state and local levels that we, the citizens of Maine, are empowered to correct this dangerous imbalance.

1.2. WHAT DIFFERENCES BETWEEN HUMAN BEINGS AND CORPORATIONS ARE MOST MEANINGFUL WHEN WE TALK ABOUT CORPORATE POWER?

While people care about their communities and the world they'll leave their children, the sole purpose of a for-profit corporation is to generate profit for its stockholders. Publicly held corporations are legally bound to disregard their impact on the public interest if doing so will increase profits. (The legal basis for this dates back to 1918, when the court ruled that Henry Ford could not give his customers a break if it meant less profit for his shareholders--notably the Dodge brothers, who filed the lawsuit.) Another crucial difference is that corporations have far more money than citizens or communities: of the 100 largest "economies" in the world, more than half are corporations, not nations.

In addition to wielding their enormous financial power, corporations can:

- exist forever and in many different locations at once--giving them far greater potential than any human being or small business has to harm local communities.
- own one another, making our communities vulnerable to decisions made far away. Witness what has become of two successful "Maine" companies: Hannaford is now owned by Delhaize America (parent of Food Lion), which is owned by the Belgian corporation Delhaize "Le Lion." Poland Spring was bought by France's Perrier, which was bought by Switzerland's Nestle, one of three multinationals trying to control the world's freshwater supplies.
- buy up another publicly held corporation even if its directors don't want it taken over. Thus Ben & Jerry's, a Vermont ice cream company renowned for social responsibility, was bought by the much less-respected Unilever in 2000, even though Ben & Jerry's directors were opposed to selling.
- create new corporations in order to evade the law in ways no person could. For example, after W. R. Grace spent years knowingly exposing workers in its Libby, Montana, plant to asbestos and even blowing it into the town with exhaust fans (less expensive than air filters), it created parallel corporations and subsidiaries and transferred assets into them. Then it declared bankruptcy, neatly avoiding further responsibility for its lethal decisions--while continuing to pay stockholders dividends through the parallel corporations.
- carry on without regard for moral, familial, environmental, or spiritual concerns that are central to human beings. In fact, directors of publicly held corporations are effectively required by law to ignore any such concerns.

1.3. ISN'T A SMALL CORPORATION OR A FAMILY-OWNED ONE DIFFERENT THAN A PUBLICLY HELD MULTINATIONAL?

Yes, they're different in some important ways: Most of the jobs in Maine are in relatively small corporations and other small businesses. Privately held corporations--those in which stock has not been offered for sale to the public--have greater freedom to define their missions in ways that value the fabric and needs of their communities. Even publicly held corporations that are smaller don't

have such huge potential for negative impact as large ones that do business wherever they can produce the biggest profits.

Large corporations are the ones with the teams of attorneys, lobbyists, and money to take on any small business that gets in their way. For example, in 2003 the multinational corporation Monsanto sued the family-owned Oakhurst company, a Maine dairy, claiming “unfair business practices and unfair competition.” Why? Because Oakhurst’s label advertised its farmers’ pledge not to use genetically engineered bovine growth hormone, which Monsanto manufactures. The biotech giant successfully intimidated the dairy into settling out of court and changing its label. Limiting the powers of corporations won’t hurt small corporations; it will help protect them from this kind of coercion and from genuinely unfair competition from large multinationals.

1.4. MAINE MEDIA ARE OWNED BY CORPORATIONS. WILL THESE LAWS ELIMINATE FREEDOM OF THE PRESS?

Not at all--freedom of the press is protected by the U. S. Constitution. However, media conglomerates and the economic power of large corporations have shrunk the independent watchdog role that our founders had in mind when they guaranteed the press its freedom. For example, after two Fox news reporters researched and produced a television series that highlighted the public health dangers of Monsanto’s bovine growth hormone, Monsanto demanded that Fox rewrite the script. The network acquiesced and ultimately fired the two reporters, who insisted on the public’s right to know what they’re consuming.

1.5. WON’T REDUCING CORPORATE POWER HURT MAINE BUSINESSES THAT ARE ALREADY STRUGGLING UNDER REGULATION?

Legislation to prevent abuse of the public interest and use of corporate financial might to undermine the democratic process will only affect those corporations that engage in such activities. It’s the larger corporations that will most feel the influence of the two bills described below when the legislation is adopted.

But the issue of over-regulation is a serious one and actually is evidence of another way corporations manipulate our government to their advantage. As Thom Hartmann explains in *Unequal Protection*, if a regulation is adopted that says “‘you can emit no more than 10 ppm of mercury,’ then *you can legally emit up to 10 ppm.*” Dangerous emissions could be a liability to a big manufacturer if it is sued by citizens who have been harmed by its emissions--but if the corporation can persuade government to pass a lax regulation, then any dangerous emissions up to the regulated level become legal. Thus, we have literally thousands of regulations written by lobbyists for large corporations, creating administrative requirements which are easily handled by their legal and technical staffs--but which place an enormous burden on the backs of small businesses. If large

corporations could not buy governmental favors and had to purchase or develop the technology to avoid releasing emissions they know are dangerous, we would have better government, fewer new regulations, *and* healthier living conditions.

2. Frequently asked questions about LD 1495—An Act to Limit Corporate Influence Over the Political Process:

2.1 HOW ARE CORPORATIONS ENGAGED IN POLITICAL ACTIVITY AT PRESENT?

Although corporations cannot vote, they can and do disrupt the concept of “one person, one vote” levying their financial power at both the state and local levels. In 2005, 181 registered lobbyists are representing 359 clients as they try to influence lawmakers and policymakers. Their clients include 13 multinational corporations and at least 37 Fortune 500 companies who can afford to lunch with legislators on both sides of the aisle and take the regulators out to dinner. The more influence they have on Maine’s direction, the less voice Maine citizens have in their own government.

One way that the influence of big corporations hurts smaller businesses and everyday citizens is in our tax laws. While private citizens and small business owners carry a heavy load of property and income taxes, corporate income taxes play a steadily shrinking role in Maine’s tax revenues—just 3.4 percent in 2003. Meanwhile, subsidies to corporations have risen steeply. Business Equipment Tax Reimbursements (BETR) paid by the state are soaring—from \$4.7 million in 1997, to \$42.5 million in 2000, to \$65.5 million in 2004. About 200 corporations with less than 10 percent of Maine's labor force get 95 percent of BETR subsidies. Many of these corporations—including National Semiconductor, International Paper, Champion International, General Dynamics/BIW, and Nestle's/Poland Spring—are double dipping, taking BETR refunds from the state and Municipal Tax Increment Financing (TIF) from local communities—making a profit on their taxes. Those profiting the most from BETR are primarily out-of-state entities.

But corporate influence penetrates our governmental processes still further. At present, a corporation can legally employ people to gather signatures for a so-called “citizen” initiative or to try to defeat legitimate ones. When big money meddles with the democratic process, the interests of everyday citizens suffer.

2.2. HOW CAN CORPORATIONS DO THIS LEGALLY WHEN OUR FOUNDERS ESTABLISHED GOVERNMENT “BY THE PEOPLE AND FOR THE PEOPLE”?

Ever since the courts began treating corporations as “persons” under the law, corporations have usurped the Bill of Rights in many ways. The most egregious is claiming the right to political speech, and courts have interpreted the act of putting wealth behind political goals as “political speech.” This gives a large corporation a huge advantage, because there is no way any

individual's vote can have the influence of millions of dollars spent on lobbyists and advertising. At every level—federal, state, and even local—our founders' vision is rapidly giving way to government by the corporations and for the corporations. Anyone who values democracy needs to help bring a halt to this.

2.3. ARE THERE OTHER REASONS WHY WE NEED TO ELIMINATE CORPORATE "PERSONHOOD"?

In addition to claiming a right to "political speech" under the First Amendment, corporations have claimed other aspects of free speech. For example, when the State of Vermont passed a consumer's right-to-know law requiring milk from cows administered bovine growth hormone to be labeled accordingly, corporations successfully fought the law in court by saying it violated their right "not to speak" under the First Amendment. And in *Kasky vs. Nike*, the shoe manufacturer defended deceptive advertising by saying it was exercising freedom of speech. Arguments such as these will not stand up in Maine courts after LD 1495 passes.

2.4. HOW DID CORPORATIONS EVER COME TO BE CONSIDERED PERSONS?

This is a question with a long history, but in a nutshell: in 1868, the Fourteenth Amendment guaranteed that freed slaves would have full access to due process under U.S. law. In the next half century, 0.05 percent of the cases brought to the U. S. Supreme Court under the Fourteenth Amendment dealt with racial issues, whereas a full 50 percent involved corporations seeking the status of persons under the Bill of Rights by claiming that the Fourteenth Amendment applied to "artificial persons," including corporations. To us it may seem laughable that a corporation with unlimited existence, radically less legal liability than a citizen, and a consequent ability to accumulate massive wealth would need the rights and protections that our founders said belong to any human being. But for corporate directors wanting more power to make profit, gaining the ability to claim such protections was worth colluding with competitors in court case after court case.

Corporations' big break came in the 1886 Supreme Court case of *Santa Clara County vs. Southern Pacific Railroad*. Two significant sentences were inserted into the headnotes for that case, stating that the justices believed that equal protection under the law applied to corporations as well as people. Even though the headnotes were not part of the case ruling, corporate lawyers used this to seize the rights of persons, including the right to political free speech, for their corporations. This has been an ever-increasing violation of truth, democracy, and the public interest.

The truth is that people created legislatures, legislatures created corporations, and corporations are thus subordinate to people. By distinguishing between human beings and corporations, LD 1495 restores the intent of Maine's founders and the lawmakers who, in 1831, created corporations in Maine.

2.5. IF A U.S. SUPREME COURT CASE SET US ON THIS PATH, WOULDNT IT BE UNCONSTITUTIONAL TO DO AWAY WITH CORPORATE "PERSONHOOD"?

The U.S. Supreme Court has never ruled directly on this question. If restoring the intent of Maine's founders and early lawmakers in our state's law should result in a U.S. Supreme Court case, many feel the case is long overdue. If the Supreme Court ruled that corporations do not have the same inherent rights as human beings, then Maine would have provided a huge service to the entire nation. If the court ruled that corporations are equal to human beings, then it would draw national attention to an issue that makes a travesty of democracy—and to a need for a constitutional amendment to correct it.

2.6. HOW WILL THIS AFFECT SMALL BUSINESSES, INCLUDING THOSE THAT ARE INCORPORATED?

It will help level the playing field for them. It's the large corporations that have big money to throw into lobbying and creating or defeating referenda, and it's the large corporations, most of them from away, that get most of Maine's tax subsidies. In Augusta, 83 out-of-state corporations lobby to direct Maine's laws and regulations, while owners of smaller, Maine-based corporations lack such sway. Reducing large corporations' role in Maine's government will increase the voices of smaller businesses and of Maine citizens.

2.7. WHAT RIGHTS WILL CORPORATIONS HAVE LEFT?

Corporations will, of course, continue to enjoy limited liability and other advantages. They also will have all of the rights they need to protect them from abuse by the government, including due process, but those rights will be conveyed by statute—by the will of the legislature—just as corporations were created by statute. Corporations will have equal protection under the law relative to other corporations, but not relative to human beings or other forms of business, such as partnerships. This will be another leveling effect of LD 1495.

2.8. WILL THIS RESTRICT THE FREEDOM OF STOCKHOLDERS AND EMPLOYEES OF CORPORATIONS?

Not at all. They are citizens who will retain the full rights of citizens.

2.9. WILL THIS COST JOBS?

Corporations that want to protect their excessive political power will say that to scare people, but let's be realistic: Maine contains markets and resources that

corporations want to tap to make money, and so they will continue to do business here. If a corporation really were to “take its marbles and leave,” then it would mean that the power to overrun the will of Maine’s citizens is imperative to that company, but this is not the kind of business that builds a healthier state. By leveling the playing field, this legislation will help small businesses, which generate most of Maine’s economic growth and secure, well-paying jobs, and will preserve democracy.

2.10. WHAT IS THE COST OF IMPLEMENTING THIS LAW?

It is the cost of NOT implementing it that is daunting: the influence of Maine’s citizens in state and local issues will continue to be eroded by corporate money, and corporations from elsewhere will keep buying passage to profits that they will take out of our state. Maine needs sustainable economic growth—businesses that are committed to Maine’s communities and keep their money in them—and it needs government that is free to serve the will of its people. If we cannot guarantee those, then we betray both our founders and our grandchildren.

2.11. WHAT WILL BE DIFFERENT THE DAY AFTER THIS LAW PASSES?

The voices of everyday citizens will immediately be stronger, as will the positions of Maine’s small businesses. Large corporations will no longer be able to employ outside lobbyists to press their interests in Maine’s legislature, nor will they be able to overwhelm the will of citizens in local communities by hiring agents to promote or defeat referenda. Corporations will not be able to defend deceptive advertising as their “freedom of speech” or withhold information by claiming freedom “not to speak.” The inherent rights of persons—breathing, fragile human beings, concerned with the safety and futures of their families and communities—will be affirmed.

3. Frequently asked questions about LD 1474—An Act To Require That Corporations Be Operated in a Manner That Does Not Adversely Affect the Public Interest

[Note: most of the following answers were written by Robert C. Hinkley, primary author of LD 1474 and a corporate attorney for almost 25 years.]

3.1. HOW DOES THIS BILL PROTECT HUMAN RIGHTS IN MAINE?

Right now there is a grave conflict between the rights of Maine citizens and the responsibility of corporate directors, who are required by law “to serve the best interests of the corporation”—in other words, to maximize short-term profits for the shareholders. By placing the Code of Corporate Responsibility in law, this legislation will help ensure that the well-being of our family members, communities, and environment aren’t sacrificed for short-term profits.

3.2. WHAT IS THE CODE OF CORPORATE RESPONSIBILITY?

The code is a 28-word amendment to corporate charter law that broadens the responsibilities of a corporation's directors. It upholds the traditional mandate for directors to act in the best interests of the corporation and adds "but not at the expense of the environment, human rights, public health or safety, welfare of the communities in which the corporation operates or dignity of its employees."

3.3. WHY DO WE NEED THIS CHANGE IN THE LAW?

Every day, tons of pollutants are dumped into the environment—in Maine and every other state—by corporations. Every year, the tobacco industry alone is responsible for the deaths of over 4.5 million people. Every month, thousands of good paying jobs are eliminated and replaced with sweatshop labor in other countries. These are merely some of the abuses of the public interest for which corporations are responsible. None of them are illegal. Even if we tried, laws couldn't be passed fast enough to stop corporate abuse of the public interest, one abuse at a time. The code is a strategy to eliminate such abuse at its source. It eliminates the cause of the problem rather than treating its symptoms.

3.4. WHERE DOES ABUSE OF THE PUBLIC INTEREST BEGIN?

Our founding fathers had no way of knowing that the government they were forming would someday have to regulate corporations as they have evolved. The Constitution provides a marvelous and effective system for governing people because human beings are living creatures, capable of exercising conscience and concern for others. Corporations, on the other hand, are artificial constructions that do not have self-regulating mechanisms or intrinsic constraints against acting destructively. They are amoral. They currently have no reason to limit antisocial behavior unless required—issue by issue—to do so by law.

3.5. BUT DON'T CORPORATIONS GAIN MORALITY FROM THE PEOPLE WHO WORK FOR THEM?

Most of the time, no. Those people are not free to act for themselves; they are legally bound to act only in the best interests of the corporation. All too often, what will maximize a corporation's profits and what's in the public's best interest are at odds, placing enormous pressure on corporate employees to pursue profit at the public's expense.

3.6. HOW DOES THIS CONFLICT PLAY ITSELF OUT?

Dangerously. Because corporate action is usually the result of one group of people formulating a plan which other groups of people carry out, individual people within a corporation may feel very little personal responsibility for adverse outcomes, especially those they don't see. They can avoid the guilt or shame they would experience if confronted with the consequences directly

or immediately. Unfortunately, as companies get bigger, individual responsibility tends to diminish even further.

Moreover, large corporations are capable of greater harm. They can act globally at the push of a button. They can carry out projects of enormous scope, involving the coordinated behavior of hundreds or thousands of employees backed by millions—sometimes billions—of dollars. As a result, corporations are now capable of doing more damage to the environment, human rights, public health and safety, the dignity of employees, and the welfare of our communities in one afternoon than an individual human being can do in a lifetime.

3.7. IF THIS IS A NATIONWIDE PROBLEM, OR EVEN AN INTERNATIONAL ONE, WHY ARE WE WORKING FOR CHANGE AT THE STATE LEVEL?

Because the problem is rooted in state laws. All corporations are formed under state law, and the earliest corporations actually were formed to serve the public interest. But today, the laws of all states create corporate entities that cannot easily be stopped from damaging the public interest. This shift began when state legislatures changed corporate law in the late 19th and early 20th centuries, vigorously competing with other states to attract businesses and jobs. Such changes proved to be a devil's bargain.

Today, 60 percent of the Fortune 500 companies are incorporated in Delaware, but very few of them have more than a post office box there. Their factories are in other states or overseas. The move by states to attract business by changing their corporate laws did not even produce increased state revenues. Companies quickly learned to play states against each other to reduce the burden of state franchise taxes (taxes companies pay for the privilege of being incorporated within a particular state). Today only Delaware receives any significant revenue from this source—less than \$1 billion. In Maine, annual revenues from franchise taxes amount to less than 1 percent of the state's total budget.

3.8. HOW DOES MAINE CONTRIBUTE TO THE PROBLEM OF CORPORATE ABUSE OF THE PUBLIC INTEREST?

All states provide that corporate personnel are required to pursue only the corporation's self-interest, without any balancing need to safeguard the public interest. In fact, Maine law sponsors relatively few big corporations. But Maine contributes to the problem, and this needs to be changed. Passing the code will set an example for other states to follow.

3.9. WILL THE CODE MAKE MAINE CORPORATIONS LESS COMPETITIVE OR DRIVE COMPANIES OUT OF STATE?

No. If a Maine corporation believes that this law will make it less competitive, it will be free to move its site of incorporation to a state that will allow it to operate without any regard for the public interest, but the code will not cause a company to move its factories, operations, or jobs out of Maine. It may, however, attract to Maine businesses that want to operate in more socially responsible ways than the "old" laws in other states will allow them.

3.10. HOW SOON CAN THIS LEGISLATION BECOME FULLY EFFECTIVE?

Corporations will need time to develop the technology and systems necessary to operate in ways that safeguard the public interest. The code includes two provisions designed to ease the transition from being a company that damages the public interest to being one that protects it. First, penalties under the code will not become effective in Maine until 25 other states have passed similar legislation. Second, because most of the serious harm comes from the largest corporations, there is an exemption for corporations with less than \$15 million in annual revenues. However, this exemption can be reduced if smaller companies are found to be abusing the public interest.

3.11. IF COMPANIES CAN RE-INCORPORATE ELSEWHERE, ISN'T IT FUTILE TO TRY TO ENACT THE CODE IN MAINE NOW?

Because corporations do not necessarily build their facilities where they are chartered, this law will not eliminate corporate abuse of the public interest in Maine; other states will have to help for that to happen. But the code will make Maine corporations more socially responsible, and it is our responsibility as citizens to stop sponsoring companies that abuse the public interest.

Maine's act of common sense is likely to be followed by other states. There are groups working to introduce the code in several other states, including California, Minnesota, and Massachusetts. Consideration is also being given to a constitutional amendment to require all states to pass it.

3.12. IS THERE SUPPORT FOR THIS KIND OF CHANGE THROUGHOUT THE UNITED STATES?

Opinion surveys have shown that more than 90 percent of Americans believe it's wrong for corporations to pursue the bottom line without respecting the rights of employees and communities. Essentially, they show that Americans believe we can—and should—have corporations that pursue profits while safeguarding the environment and other elements of the public interest. As more states pass the code, more companies will find ways to serve their customers without doing harm. Because this is what Americans want, doing business in this way will make companies more competitive.

3.13. WHAT IMPACT WILL THIS LAW HAVE ON NON-PROFIT CORPORATIONS?

None. Non-profit corporations exist to serve purposes other than profit; the language of the code does not apply to them.

3.14. WHAT WILL BE THE COST OF IMPLEMENTING THE CODE?

The cost will vary. Companies doing business in ways that already comply with the code will

incur few or no costs. Companies that now harm the public interest are literally passing the costs of how they do business on to the public—so the costs are already there, but the question is who pays them. Under the code, those costs will be brought inside the corporation, which will create incentives for corporations to find ways to reduce them. Corporations that have been free to ignore many of the real costs of doing business may have to reallocate some expenses and invest in finding ways to continue making profits while protecting the public interest. These are not mutually exclusive goals.

3.15. WHAT WILL CHANGE THE DAY AFTER THIS LAW IS ENACTED?

Directors of corporations will immediately have legal “permission” to consider what is right for communities, employees, and the environment and to bring such concerns to the table. There will be a shift in the basic paradigm of corporate culture—the present idea that profit is the only thing that matters. Hope will be restored that people and governments for the people, by the people and of the people can once again control corporations instead of it being the other way around.

Many corporations today have begun to talk about behaving more socially responsibly, but there remains a profound gap between what they say and what they do. Passing this law in Maine will be the first tangible step toward plugging that gap.

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