

Memorandum

Date: March 23, 2012

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager 

Subject: Miscellaneous Items

Council Schedule

With Spring Break upon us next week, I wanted to update the Council on your upcoming schedule.

March 26: Regular meeting is cancelled due to Spring Break.

April 2: The Council will meet at 6:00 in a work session. Agenda items for this evening include an update on the aquatic center concept and discussions regarding potential public/private partnerships; the plans the Library has for utilizing the \$1 million for capital projects provided by Clackamas County; and a discussion of a possible resolution supporting a constitutional amendment allowing legislation that would regulate campaign financing options for Federal offices. Information is attached to this memorandum regarding this final item.

April 9: Regular meeting with a work session immediately following. We have invited staff from Clackamas County's Economic Development Department to brief the Council on ideas and concepts for economic development. It is likely that there will be at least one more such briefing as the Council explores opportunities for economic development in West Linn.

Police Department Staffing

This week two new police officers were sworn-in, Jim Abeles and Chris Thomas. This brings the department once again to full staffing.

Recruitment Update

This week, the Human Resources Department initiated the recruitment of an Assistant City Attorney. Information about the position can be found on the City's website. Applications are due by April 30.

We also are continuing to recruit for a Public Works Director/City Engineer. Applications are due by April 9 for that position.

112TH CONGRESS
1ST SESSION

S. J. RES. 29

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2011

Mr. UDALL of New Mexico (for himself, Mr. BENNET, Mr. HARKIN, Mr. DURBIN, Mr. SCHUMER, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. BEGICH, and Mrs. SIIAHEEN) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the fol-*
4 *lowing article is proposed as an amendment to the Con-*
5 *stitution of the United States, which shall be valid to all*
6 *intents and purposes as part of the Constitution when*
7 *ratified by the legislatures of three-fourths of the several*
8 *States within seven years after the date of its submission*
9 *by the Congress:*

1 "ARTICLE —

2 "SECTION 1. Congress shall have power to regulate
3 the raising and spending of money and in kind equivalents
4 with respect to Federal elections, including through set-
5 ting limits on—

6 "(1) the amount of contributions to candidates
7 for nomination for election to, or for election to,
8 Federal office; and

9 "(2) the amount of expenditures that may be
10 made by, in support of, or in opposition to such can-
11 didates.

12 "SECTION 2. A State shall have power to regulate the
13 raising and spending of money and in kind equivalents
14 with respect to State elections, including through setting
15 limits on—

16 "(1) the amount of contributions to candidates
17 for nomination for election to, or for election to,
18 State office; and

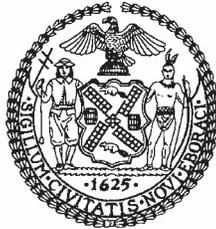
19 "(2) the amount of expenditures that may be
20 made by, in support of, or in opposition to such can-
21 didates.

22 "SECTION 3. Congress shall have power to implement
23 and enforce this article by appropriate legislation."

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Seth A. Grossman, Esq.
Counsel to the Committee

Artyom Matusov
*Legislative Policy Analyst to
the Committee*



THE COUNCIL

REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

Robert Newman, Legislative Director
Alix Pustilnik, Deputy Director

COMMITTEE ON GOVERNMENTAL OPERATIONS

Hon. Gale Brewer, Chair
December 16, 2011, 1 p.m.

PRECONSIDERED
RES. NO.:

By Council Members Lander, Mark-Viverito, The Speaker
(Council Member Quinn), Brewer, Levin, Chin, James and
Rose

TITLE:

Resolution opposing the United State Supreme Court's
interpretation of the Constitution in *Citizens United*
regarding the constitutional rights of corporations,
supporting an amendment to the Constitution to provide
that corporations are not entitled to the entirety of
protections or "rights" of natural persons, specifically so
that the expenditure of corporate money to influence the
electoral process is no longer a form of constitutionally
protected speech, and calling on Congress to begin the
process of amending the Constitution.

I. Introduction

Today, the Committee on Governmental Operations (the “Committee”), chaired by Council Member Gale Brewer, will meet to consider a preconsidered resolution opposing the United State Supreme Court’s interpretation of the Constitution in *Citizens United* regarding the constitutional rights of corporations, supporting an amendment to the Constitution to provide that corporations are not entitled to the entirety of protections or “rights” of natural persons, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech, and calling on Congress to begin the process of amending the Constitution (the “Resolution”).

II. The Supreme Court’s *Citizens United* Decision

In January 2010, the United States Supreme Court issued its decision in *Citizens United v. Federal Election Commission*, holding that independent spending on elections by corporations and other groups could not be limited by government regulations.¹ Specifically, the Court held that a provision of the federal campaign finance law that prohibited certain corporate-funded television broadcasts in the 60 days before a general election (or the 30 days before a primary) violated the First Amendment. In reaching its decision, a majority of the Supreme Court, relying on prior decisions, interpreted the First Amendment of the Constitution to afford corporations the same free speech protections as natural persons. According to the majority, corporations “should not be treated differently under the First Amendment simply because such associations

¹ *Citizens United v. Federal Election Comm’n*, 558 U.S. ___, 130 S.Ct. 876 (2010).

are not ‘natural persons’.”² Thus, this decision rolled back the legal restrictions on corporate spending in the electoral process, allowing for unlimited corporate spending to influence elections, candidate selection, and policy decisions.

In an eloquent and spirited dissent, Justice John Paul Stevens took issue with the majority’s decision. According to Justice Stevens, the majority’s opinion is contrary to the true purpose of the First Amendment, as well as common sense. As explained by Justice Stevens:

[C]orporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their ‘personhood’ often serves as a useful legal fiction. But they are not themselves members of ‘We the People’ by whom and for whom our Constitution was established.³

At bottom, the Court’s opinion is [] a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.⁴

Citizens United has proven to be one of the Court’s most controversial decisions. Indeed, as summed up by one commentator, “the widespread assumption that the decision ‘changed everything’ about campaign finance regulation may well be self-reinforcing.”⁵ Many scholars and good government groups immediately predicted that *Citizens United* would “open the floodgates” to massive corporate spending in elections all over the

² *Citizens United*, 130 S.Ct. at 900.

³ *Citizens United*, 130 S.Ct. at 972 (Stevens, J. *dissenting*).

⁴ *Citizens United*, 130 S.Ct. at 979 (Stevens, J. *dissenting*).

⁵ Mark Schmitt, “How We Got Here,” *The American Interest*, July-August 2010.

country.⁶ Even more disconcerting, is the potential for corporate interests to wield considerable influence over candidates by threatening to spend substantial corporate funds toward their defeat.⁷

There is mounting evidence that these concerns and predictions are already coming true. In the first national election after *Citizens United*, spending by outside groups surged by 400%.⁸ Nearly half of the money spent came from ten groups, seven of which did not fully disclose their donors.⁹ All told, outside groups, many funded largely or entirely by corporations, spent nearly \$300 million to influence federal elections. Moreover, these groups appear to have been very successful in influencing election outcomes. In 80% of elections in which partisan control changed hands, spending by outside groups favored the winning candidate.¹⁰

III. Proposed Federal Legislation

In response to these developments, several members of Congress are seeking to amend the Constitution in order to reverse the *Citizens United* decision and to establish that corporations are not entitled to the entirety of protections or “rights” of natural persons, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech.¹¹

⁶ Kenneth P. Vogel, “Court decision opens floodgates for corporate cash,” *Politico*, January 21, 2010.

⁷ David D. Kirkpatrick, “Lobbyists Get Potent Weapon in Campaign Ruling,” *The New York Times*, January 22, 2010.

⁸ Public Citizen, *12 Months After: The Effects of Citizens United on Elections and the Integrity of the Legislative Process* 9 (Jan. 2011), available at <http://www.citizen.org/documents/Citizens-United-20110113.pdf>.

⁹ *Id.* at 9-10.

¹⁰ *Id.* at 2.

¹¹ There are at least 6 proposed amendments in the current Congress, including H.J. Res. 72, H.J. Res. 78, H.J. Res. 86, H.J. Res. 88, S.J. Res. 29, and S.J. Res. 33.

IV. Other Jurisdictions

On December 6, 2011, the Los Angeles City Council adopted a resolution in support of a constitutional amendment to ensure “corporations are not entitled to the entirety of protections or ‘rights’ of human beings, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech, including a constitutional amendment.”¹²

V. The Resolution

The Resolution opposes the Supreme Court’s interpretation of the Constitution in *Citizens United* regarding the constitutional rights of corporations, supports an amendment to the Constitution to provide that corporations are not entitled to the entirety of protections or “rights” of natural persons, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech, and calls on Congress to begin the process of amending the Constitution.

¹² See Motion of the Los Angeles City Council, enacted December 6, 2011 (on file with Committee Counsel).

Preconsidered Res. No.

Resolution opposing the United State Supreme Court’s interpretation of the Constitution in *Citizens United* regarding the constitutional rights of corporations, supporting an amendment to the Constitution to provide that corporations are not entitled to the entirety of protections or “rights” of natural persons, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech, and calling on Congress to begin the process of amending the Constitution.

By Council Members Lander, Mark-Viverito, The Speaker (Council Member Quinn), Brewer, Levin, Chin, James and Rose

Whereas, In 2010 the United States Supreme Court issued its decision in *Citizens United v. Federal Election Commission*, holding that independent spending on elections by corporations and other groups could not be limited by government regulations; and

Whereas, This decision rolled back the legal restrictions on corporate spending in the electoral process, allowing for unlimited corporate spending to influence elections, candidate selection, and policy decisions; and

Whereas, In reaching its decision, a majority of the Supreme Court, relying on prior decisions, interpreted the First Amendment of the Constitution to afford corporations the same free speech protections as natural persons; and

Whereas, In his eloquent dissent, Justice John Paul Stevens rightly recognized that “corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their ‘personhood’ often serves as a useful legal fiction. But they are not themselves members of ‘We the People’ by whom and for whom our Constitution was established”; and

Whereas, The Court's decision in *Citizens United* severely hampers the ability of federal, state and local governments to enact reasonable campaign finance reforms and regulations regarding corporate political activity; and

Whereas, Corporations should not be afforded the entirety of protections or "rights" of natural persons, such that the expenditure of corporate money to influence the electoral process is a form of constitutionally protected speech; and

Whereas, several proposed amendments to the Constitution have been introduced in Congress that would allow governments to regulate the raising and spending of money by corporations to influence elections; now, therefore, be it

Resolved, That the Council of the City of New York opposes the Supreme Court's interpretation of the Constitution in *Citizens United* regarding the constitutional rights of corporations, and supports amending the Constitution to provide that corporations are not entitled to the entirety of protections or "rights" of natural persons, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech, and calls on Congress to begin the process of amending the Constitution.

SAG
LS# 3125
12/12/11

RESOLUTION No.

Establish as a position of the Portland City Council that corporations should not have the constitutional rights that natural persons possess, that money is not speech and that independent campaign expenditures and campaign contributions should be regulated.

WHEREAS, each year, the City of Portland updates its Federal Legislative Agenda; and,

WHEREAS, the United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings also known as “natural persons”; and,

WHEREAS, corporations can and do make important contributions to our society, but the City Council does not consider them natural persons; and,

WHEREAS, while state and federal governments may provide certain privileges to corporations, these privileges do not equate to the rights of natural persons protected by the U.S. Constitution; and,

WHEREAS, the right to free speech is a fundamental freedom and unalienable right and free and fair elections are essential to democracy and effective self-governance; and,

WHEREAS, United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations"; and,

WHEREAS, the United States Supreme Court held in *Buckley v. Valeo* (1976) that the appearance of corruption justified limits on contributions to candidates, but rejected other fundamental interests that the City Council finds compelling such as creating a level playing field and ensuring that all citizens, regardless of wealth, have an opportunity to have their political views heard; and,

WHEREAS, the United States Supreme Court in *Buckley* overturned limits on independent campaign expenditures by individuals, associations, and political action committees because it found that the government’s interest in preventing corruption or perception of corruption of elections was sufficient only to allow limits on direct contributions to candidates; and,

WHEREAS, United States Supreme Court Justice John Paul Stevens observed in *Nixon v. Shrink Missouri Government PAC* (2000) that “money is property, it is not speech,”; and,

WHEREAS, the United States Supreme Court recognized in *Austin v. Michigan Chamber of Commerce* (1990) the threat to a republican form of government posed by “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” and upheld limits on independent expenditures by corporations; and

WHEREAS, the United States Supreme Court in *Citizens United v. The Federal Election Commission* (2010) overruled the decision in *Austin* and the portion of *McConnell v. Federal Election Commission* (2003) that had upheld restrictions on independent corporate expenditures, holding that the First Amendment protects unlimited direct corporate spending to influence

elections, candidate selection, and policy decisions and to sway votes; and,

WHEREAS, prior to *Citizens United* decision unlimited independent campaign expenditures could be made by individuals and associations, though such committees operated under federal contribution limits; and,

WHEREAS, given that the *Citizens United* decision “rejected the argument that political speech of corporations or other associations should be treated differently” because the First Amendment “generally prohibits the suppression of political speech based on the speaker’s identity,” there is a need to consider other reasons in addition to corruption or the perception of corruption regulating independent expenditures for or against a candidate; and,

WHEREAS, a February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the U.S. Supreme Court *Citizens United* ruling that allowed use of corporate treasury dollars for independent expenditures; and,

WHEREAS, the opinion of the four dissenting justices in *Citizens United* noted that corporations have special advantages not enjoyed by natural persons, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets; and,

WHEREAS, corporations are legally required to put profits for shareholders ahead of concerns for the greatest good of society while individual shareholders as natural persons balance their narrow self-interest and broader public interest when making political decisions; and,

WHEREAS, Oregon Senator Jeff Merkley and Oregon Representatives Peter DeFazio, Earl Blumenauer, and Kurt Schrader are pursuing campaign finance reform legislation with a focus on addressing *Citizens United* through amendments to the United States Constitution; and,

WHEREAS, addressing both the *Citizens United* decision, and corporate personhood is necessary; and,

WHEREAS, the City Councils of Missoula, Montana; Boulder, Colorado; and Madison, Wisconsin have referred the issue of corporate personhood to their communities for an advisory vote;

NOW, THEREFORE, BE IT RESOLVED that it is the position of the Portland City Council that corporations should not have what is known as, “corporate personhood,” or the constitutional rights that natural persons possess; and,

BE IT FURTHER RESOLVED given its impact on free and fair elections and effective self-governance that Portland City Council determines that the most urgent action needed to address the negative impacts of United States Supreme Court *Citizens United (2010)* decision is to stop unlimited independent campaign expenditures by corporations; and,

BE IT FURTHER RESOLVED that the City of Portland hereby includes in its 2012 Federal Legislative Agenda support for an Amendment to the United States Constitution, which consistent with this Resolution, reverses the impacts of *Citizens United*, including, but not limited to the provisions of the current drafts of S. J. Res. 29 introduced by Senator Tom Udall of

New Mexico and Senator Jeff Merkley of Oregon and H.J. Res. 72 introduced by Representative Kurt Schrader of Oregon and co-sponsored by Representatives Earl Blumenauer and Peter DeFazio of Oregon; and, respectfully urges Oregon's Congressional delegation to prioritize congressional proposal of an amendment to the United States Constitution addressing the threats to representative government identified in this resolution so that the states may ratify it; and,

BE IT FURTHER RESOLVED that Portland City Council requests that the City Attorney's Office determine the legality and process of referring an advisory vote to the citizens of Portland on the issue of corporate personhood, and present their findings within 30 days to the Council for further consideration; and

BE IT FURTHER RESOLVED that the City of Portland calls on other communities and jurisdictions and organizations like the U.S. Conference of Mayors and National League of Cities to join with us in this action by passing similar Resolutions.

Adopted by the Council:

Mayor Sam Adams

Prepared by: Clay Neal & Jennifer Yocom

Date Prepared: January 5, 2012

LaVonne Griffin-Valade

Auditor of the City of Portland

By

Deputy