



City of Palo Alto

City Council Staff Report

(ID # 3196)

Report Type: Action Items Meeting Date: 10/22/2012

Summary Title: HRC Resolution in response to US Supreme Court Decision Citizen's United vs. FCC

Title: Human Relations Commission Recommends Adoption of a Resolution In Support of an Amendment to the United States and California Constitutions to State "Corporations are Not People and Money is Not Speech" in Response to United States Supreme Court Decision of Citizen's United vs. Federal Communications Commission

From: City Manager

Lead Department: Community Services

Recommendation

The City of Palo Alto's Human Relations Commission's (HRC) recommends that the Council review and accept the HRC's recommendation (6 votes affirmative, 1 member absent), to adopt a resolution in support of an amendment to the United States and California Constitutions to state that:

- 1) Only human beings, not corporations, are endowed with rights that are protected by the constitution, and
- 2) Money is not speech, and therefore the expenditure of money to influence the electoral process is not a form of constitutionally protected speech and therefore may be regulated.

Background

This policy issue was brought to the HRC by participants of Santa Clara County "Move to Amend," a local chapter of a national movement which seeks to amend the United States and California Constitutions to state that "corporations are not people and money is not speech."

On September 13, 2012, the Human Relations Commission voted unanimously to request the Council to adopt a resolution, calling for an amendment to the United States and California Constitutions to recognize and establish that, first, only human beings, not corporations, have rights that are constitutionally protected and, second, the expenditure of money during

elections by corporations is not constitutionally protected speech, therefore, government may regulate these corporate expenditures. The resolution is promoted and inspired by Move to Amend, Santa Clara County chapter, a coalition of organizations and individuals with chapters around the country; its website advocates in favor of an amendment to the United States and California Constitutions “to unequivocally state that inalienable rights belong to human beings only, and that money is not a form of protected free under the First Amendment and can be regulated in political campaigns.” This constitutional amendment movement arose in response to the 2010 U.S. Supreme Court 5-4 decision in *Citizen United v. Federal Election Commission*.

In *Citizens United*, Justice Kennedy, speaking for the majority, held that, under the First Amendment, government may not suppress political speech on the basis of the speaker’s corporate identity, thus, section 203 of the Bipartisan Campaign Reform Act of 2002, which barred independent expenditures by corporations and unions from using their general treasuries to fund “electioneering communications,” was invalid on its face. In effect, Congress could not validly adopt a law to restrict independent political expenditures by corporations and unions that intend to engage in political speech, which a number of Court opinions have characterized as “indispensable to decision making in a democracy.” The majority decision determined that Section 203 adopted an outright ban on corporate political speech, backed by criminal sanctions, thus it suppressed that speech altogether. Justice Stevens, speaking for the minority, chided the majority decision for concluding that Section 203 was invalid on its face, when that argument was not presented by Citizens United in the first instance. The majority decision, Stevens observed, failed to recognize the impact of, and failed to defer to long-standing legislative determinations and actions to deal with the appearance of, corruption and undue influence in political elections, and it elided the distinction between corporations and individuals and the general societal interests at stake in campaign finance regulations. Corporations, Stevens noted, “are not themselves members of “We the People” by whom and for whom our Constitution was established.”

The proposed resolution was first presented to the HRC at its meeting on June 14, 2012. At that time, the recommendation to Council to adopt the resolution was the subject of a vote of 3 ‘yes’ and 2 ‘abstain’. Those who abstained wanted to review the Supreme Court’s decision, which was an impetus of the Move to Amend movement, before casting a ‘yes’ or ‘no’ votes. After the June HRC meeting, staff consulted with the City Attorney’s Office on the implication of the votes cast. The City Attorney’s Office opined that under Palo Alto Municipal Code section 2.22.030(c), four affirmative votes are required to take action, and an “abstain” vote is not considered an “affirmative” vote. Therefore, the HRC reconsidered this matter at its September 13, 2012 regular meeting and the Santa Clara County chapter of the Move to Amend movement presented again. Among the many attachments provided to the HRC was a link to the full United States Supreme Court decision on *Citizens United vs. Federal Elections Commission*.

Discussion

Several members of the Santa Clara County Move to Amend movement addressed the HRC at its June, 2012 and September, 2012 meetings and made the following key points for consideration.

- Corporations are not people and money is not speech: Corporations are not people in the same sense that natural humans are people, and money is not speech itself but a tool to amplify a speech.
- The first ten amendments to United States Constitution as well as 14th amendment were written for the purpose of giving legal clarity to the rights of natural people. These amendments were not written with any concern of any rights of corporations.
- The people need to clarify the U.S. and California Constitutions and to clarify that the Constitutions' purposes are to define democratic relationships among natural people to govern themselves. Corporations should not have the same rights under the constitution as natural people do.
- The Move to Amend movement is asking for regulations and limitations on the concept that corporations are an artificial construction of human society. They also spoke about the importance of corporations being regulated.

As to why this issue should matter to Palo Alto, Debbie Mytels, a member of the Santa Clara County Move to Amend movement, stated that 1) local government and political decisions are vulnerable to disruption by massive corporate contributions to campaigns and other processes, and 2) change will not happen at the national level without strong local support.

In preparation for the hearing of this matter at the September 12, 2012 HRC meeting, the HRC Chair Claude Ezran was persuaded by U.S. Supreme Court Justice John Paul Stevens' dissent in the Citizens United case. Chair Ezran believes that saying that corporations are people defies common sense. People are influenced by political ads and that heavy spending by corporations can drown out any other voice; he feels that this is undemocratic. All these arguments apply to Palo Alto at the local level. For instance, Pacific Gas and Electric Company contributed close to \$50M for Proposition 16 which, if it had passed, would have made it much harder for municipalities to start or expand their own power utility. Chair Ezran believes that starting this effort at the local level will be effective. Corporations are often motivated by profit. And while there is nothing wrong with this objective, corporations do not have same interest as the rest of the people. Corporations do not have the national interest in mind and they don't necessarily have the best interest of people in mind. Commissioner Ray Bacchetti made a comment that local elections are not easily bought and local voters pay attention to issues. So this resolution expresses support for an initiative that is a benefit to the nation at the level where it has a best

chance of being thoughtfully considered, rather than influenced by someone with a particular outcome in mind and the money to influence that outcome.

Resource Impact

There is no resource impact associated with the adoption of this resolution.

Policy Implications

There are no policy implications associated with the adoption of this resolution.

Attachments:

- : Attachment A - Excerpt June 2012 HRC mtg (DOC)
- : Attachment B - September 2012 HRC Agenda Packet (PDF)
- : Attachment C - Excerpt Sept 2012 HRC mtg (DOC)
- : Attachment D - 00710100 RESO Citizens United decision (PDF)
- : Attachment E - Public Comments (PDF)

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EXCERPT FROM HUMAN RELATIONS COMMISSION – JUNE 14, 2012

2. DISCUSSION AND ACTION ON RESOLUTION PRESENTED BY SANTA CLARA COUNTY MOVE TO AMEND CHAPTER REGARDING THE CITIZENS UNITED SUPREME COURT DECISION

Ms. Debbie Mytels, a Palo Alto resident spoke about how democracy matters to everyone. Human Rights are being excerpted by corporations. Corporations have too much power and there should be limits on the rights of corporations. She explained that the Supreme Court's ruling in the Citizen's United vs. Federal Communications Commission cannot be changed without an amendment to the constitution. She is asking for the Commission to pass a resolution that corporations are not people and money is not speech.

Mr. Gerald Gras, a Palo Alto resident spoke about the history of corporate personhood.

Ms. Anne Wilson, a Palo Alto resident spoke about her concern that the aim of corporations by their charter is to make a profit.

Mr. Paul George, Director of the Peninsula Peace and Justice Center spoke about how the Citizen's United ruling was the most recent decision but is not the main reason for the resolution. Corporations have the rights but not the responsibilities that citizens have. That equality is thrown out of balance.

Ms. Stephanie Reader, a Los Alto resident spoke about how many people are upset with this amendment and are concerned about the decision. Rich people are able to put unlimited amounts of money towards political campaigns. The League of Women Voters will be taking up this issue as well.

Mr. Aram James, a Palo Alto resident said that The Peninsula Peace and Justice Center also participates in campaign contributions. We are lumping together for profit corporations as well as non-profit contributions. We have the most robust First amendment on the planet. The ACLU is taking the stand of the constitution. He strongly opposes this resolution and encouraged the commissioners to read the entire brief and decision.

Commissioner Bacchetti said he wondered if there are two issues being confused. The question is not about the first amendment but more about regulating corporations. He likes the proposal because the capacity to distort processes is great. He thinks it is relevant to take up this issue locally and approve the resolution.

Commissioner O'Nan said she is not sure that pouring money into a campaign is not a

guarantee of its success. Not all people are fooled by campaigns. Criminal law says that corporations can be prosecuted.

Commissioner Ezran said electorates can be influenced and this is an important issue. He agrees that things are out of hand and he would support the resolution.

Commissioner Savage said she thinks this is worthy but she is not sure about the wording. She would like to re-write the resolution to make it a positive statement.

Commissioner Ezran recommended some language changes in the resolution.

Commissioner O’Nan asked for more time because she would like to read the original decision so that she can make a more informed decision.

Commissioner Ezran made a motion that the HRC approve the resolution and forward it to City Council for approval. Seconded by Commissioner Savage, who also added that the resolution include the changes suggested by Commissioner Ezran. Commissioner Ezran agreed. AYES: 3, ABSTAINED: 2.

Councilmember Holman said that there may be a question from City Council as to why only 3 out of 5 commissioners voted tonight. She suggested postponing the vote for a future meeting, so that those who abstained have more time to make a decision.

Human Relations Commission Meeting – September 13, 2012

Agenda Item # 3: Discussion and action on resolution that “Corporations are Not People and Money is Not Speech” presented by Santa Clara County Move to Amend.

Context for this agenda item: Santa Clara County Move to Amend is a local chapter of a national coalition. They are returning to the HRC to re-present their request that the HRC endorse a resolution which states that 1) Only human beings, not corporations, are endowed with rights that are protected by the constitution, and 2) Money is not speech, and therefore the expenditure of money to influence the electoral process is not a form of constitutionally protected speech and may be regulated.

This resolution was first presented to the HRC at its meeting on June 14, 2012. At that time, the resolution appeared to have passed with a vote of 3 ‘yes’ and 2 ‘abstain’. Staff consulted the City attorney on this decision as the number of votes cast was low in regards to the total membership of the HRC. Staff was informed by the City Attorney that under Palo Alto Municipal Code section 2.22.030(c), four affirmative votes are required to take action. An “abstain” vote is not considered an “affirmative” vote due to the express language in Chapter 2.22. Therefore, the item needed to be re-presented to the HRC.

In preparation to discuss this agenda item, please review the attachments provided by the presenter. Also included below under “attachments” is a web link to the entire Supreme Court Decision on Citizens United vs. Federal Elections Commission, the decision which was the impetus for the Move to Amend movement.

Action at this meeting: Two actions are being requested of the HRC by Santa Clara County Move to Amend, the presenters of this action item: 1) Endorsement of the draft resolution. 2) Forwarding of the resolution to the City Council with the endorsement of the HRC.

Attachments:

- Attachment A - MTA’s 28th amendment
- Attachment B - PA HRC SCC- MTA – look for past changes?
- Attachment C - FAQ’s
- Attachment D – California MTA Resolutions as of 9/3/12
- Attachment E: Why the ACLU is wrong about Citizens United

The following link includes a synopsis of the Citizens United decision and a link to the entire Supreme Court Decision on the matter.

- http://en.wikipedia.org/wiki/Citizens_United_v._Federal_Election_Commission

Attachment A

28th Amendment

(As proposed by the national Move to Amend organization)

Section 1 *[A corporation is not a person and can be regulated]*

The rights protected by the Constitution of the United States are the rights of natural persons only.

Artificial entities, such as corporations, limited liability companies, and other entities, established by the laws of any State, the United States, or any foreign state shall have no rights under this Constitution and are subject to regulation by the People, through Federal, State, or local law.

The privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.

Section 2 *[Money is not speech and can be regulated]*

Federal, State and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, for the purpose of influencing in any way the election of any candidate for public office or any ballot measure.

Federal, State and local government shall require that any permissible contributions and expenditures be publicly disclosed.

The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.

Section 3

Nothing contained in this amendment shall be construed to abridge the freedom of the press.

June 1, 2012

Resolution that Corporations are Not People and Money is Not Speech

WHEREAS,

- Democracy means governance by the people;
- The citizens of the City of Palo Alto hope to protect democracy in our community and our nation; and

WHEREAS,

- Corporations are artificial entities separate from human beings and are not naturally endowed with conscience or the rights of human beings;
- Corporations are creations of law and are only permitted to do what is authorized under law; and

WHEREAS,

- Corporations are not mentioned in the Constitution. The People have never granted constitutional rights to corporations;

WHEREAS,

- Corporations claim to be persons, possessing the rights of personhood, including free speech and other constitutional freedoms guaranteed by the Bill of Rights and the 14th Amendment to the Constitution of the United States; and

WHEREAS,

- Corporations have unduly influenced and unfairly interfered with democratic processes by pressuring our legislators and dominating election campaigns with virtually unlimited contributions; and

WHEREAS,

- When freedom to speak is equated with freedom to spend money, millions of people who have less money are de facto disenfranchised because their free speech is overwhelmed by the message of those spending millions of dollars;

NOW, THEREFORE, BE IT RESOLVED, that the Human Relations Commission of Palo Alto, California calls for amending the Constitution of the United States and California to establish that

1. Only human beings, not corporations, are endowed with rights that are protected by the constitution, and
2. Money is not speech, and therefore the expenditure of money to influence the electoral process is not a form of constitutionally protected speech and may be regulated.

BE IT FURTHER RESOLVED, that the Human Relations Commission of Palo Alto hereby calls on our City Council, state and federal representatives to enact resolutions and legislation to advance this effort.



ANSWERS TO QUESTIONS RELATED TO THE MOVEMENT TO AMEND THE CONSTITUTION.

This document was created in response to questions raised at the first SCC-MTA house party and from a list of questions for which Pat O'Connell suggested we have answers.

Researching and developing the answers were a cooperative effort by the SCC-MTA Education Work Group. Erik Walberg and Judy Young created and edited the final document.

The document will be used as a resource guide for future SCC-MTA House Parties.



What is a corporation?

A **corporation** is created under the laws of a state as a separate legal entity that has privileges and liabilities that are distinct from those of its members. There are many different forms of corporations, most of which are used to conduct business. Early corporations were established by charter (i.e. by an *ad hoc* act granted by a monarch or passed by a parliament or legislature). Most jurisdictions now allow the creation of new corporations through registration.

The most common corporate structure is a General Corporation. The corporation is a separate legal entity that is owned by stockholders. A general corporation may have an unlimited number of stockholders that, due to the separate legal nature of the corporation, are protected from the creditors of the business. A stockholder's personal liability is usually limited to the amount of investment in the corporation and no more.

- **How is a corporation formed?**

The following describes a typical process:

- Appoint the initial directors of your corporation.
- File formal paperwork, usually called "articles of incorporation," and pay a filing fee that ranges from \$100 to \$800, depending on the state where you incorporate.
- Create corporate "bylaws," which lay out the operating rules for your corporation.
- Hold the first meeting of the board of directors.
- Issue stock certificates to the initial owners (shareholders) of the corporation.
- Obtain licenses and permits that may be required for your business.

- **What is a corporate charter?**

Early corporations were established by charter (i.e. by an *ad hoc* act granted by a monarch or passed by a parliament or legislature). Today's corporations are controlled by laws enacted in the states where the corporations are formed. Some states use charters; others use a registration process to define exactly what a corporation is, what it can do, and what it cannot do.

The process used in the state of California can be found at:

<http://www.leginfo.ca.gov/calaw.html>

Select the box labeled "Corporations Code," then click on the SEARCH button at the bottom of the web page. This takes you to a Table of Contents.

The first section of this document "Title 1. Corporations, Division 1. General Corporation Law," consisting of chapters 1 through 23, defines what could be considered a corporate charter.



- **Who are corporations accountable to?**

To federal, state and local laws.
To the stockholders.

- **Why do businesses apply for corporate status?**

Incorporation makes a very useful tool to encourage and reward investment, innovation, job creation, and economic growth.

“Corporations Are Not People” by Jeffrey Clements (page 60, 61).

More information is provided in the “What are the benefits and responsibilities a business takes on by incorporating?” section below.

- **What are the benefits and responsibilities a business takes on by incorporating?**

Responsibilities:

In its most basic terms, corporate responsibility can come down to the ethics of a business. Each company has its own set of core values, but the company’s values also touch everyone that the business deals with. Years ago, a company’s corporate responsibility was dictated by its government. There were set laws that had to be adhered to regarding financial and social responsibility. Today, however, corporate responsibility has to take into account the world that we live in on a much wider scale.

<http://www.wisegeek.com/what-is-corporate-responsibility.htm>

Benefits:

- Owners' personal assets are protected from business debt and liability. If a corporation fails, stockholders may lose their investments, and employees may lose their jobs, but neither will be liable for debts to the corporation's creditors.
- Corporations have unlimited life extending beyond the illness or death of the owners.
- Tax free benefits such as insurance, travel, and retirement plan deductions.
- Transfer of ownership facilitated by sale of stock.
- Change of ownership need not affect management.
- Easier to raise capital through sale of stocks and bonds.

- **Are there different kinds of corporations?**

Anyone who operates a business, alone or with others, may incorporate. This is also true for anyone or any group engaged in religious, civil, non-profit or charitable endeavors. You do not have to be a business giant to be able to have the financial and other benefits of operating a corporation. Given the right circumstances, the owner(s) of a business of any size can benefit from incorporating.



What is corporate personhood?

There are two conceptions of "corporate personhood." The first simply bestows upon corporations the ability to engage in many legal actions (e.g. enter into contracts, sue, be sued, etc.). This is widely accepted and we do not object to this.

However, "corporate personhood" also commonly refers to the Supreme Court-created precedent of corporations enjoying constitutional rights that were intended solely for human beings. We believe this form of "corporate personhood" corrupts our Constitution and must be corrected by amending the Constitution. Neither the Declaration of Independence nor the Constitution ever mentions corporations. But thanks to decades of rulings by Justices who molded the law to favor elite interests, corporations today are granted so-called "rights" that empower them to deny citizens the right to full self-governance.

<http://movetoamend.org/frequently-asked-questions#1>

- **What is a corporate person that can enter contracts, sue, and be sued?**

The attributes of a modern corporation include limited liability, perpetual existence, and legal identification as a unitary actor. This encourages simplicity and efficiency in making and enforcing contracts, suing, being sued, and being prosecuted.

"Corporations Are Not People" by Jeffrey Clements (page 61, 62, 63, 66)

- **What is a corporate person that the Supreme Court has granted constitutional rights to that are superior to the constitutional rights of natural people?**

The Gilded Age Supreme Court, almost as corporate-oriented as today's Court, repeatedly used the *Santa Clara County v. Southern Pacific Railroad* case to fabricate corporate rights and strike down economic regulations. Following the *Santa Clara* case in 1886, the Supreme Court faced a wave of cases in which large corporations and the infamous corporate monopoly "trusts" demanded constitutional rights to shield them from the growing Progressive Era movement to protect employees (including child labor), the environment, fair taxes, and other public interests. On several occasions in the 1890s and early 1900s, the Supreme Court agreed with the corporations. The cases stated, without any explanation whatsoever, that "a corporation is a person under the Fourteenth Amendment."

"Corporations Are Not People" by Jeffrey Clements (page 68, 69)

The decision under state or federal laws that corporations are "persons" that can contract, sue, be sued, and be prosecuted, cannot transform corporations into "persons" under the Constitution's protections of rights.

"Corporations Are Not People" by Jeffrey Clements (page 66)



- **How do today's corporations (usually large corporations) cause harm in politics (elections, lobbying, etc.) and outside of politics?**

The primary purpose of some corporations is to make a profit. Their action may therefore not be beneficial to humankind as illustrated in the examples below. (From <http://movetoamend.org/frequently-asked-questions#1>)

- In the *Marshall v. Barlow's* case, the Supreme Court ruled that corporations have Fourth Amendment Search & Seizure rights. This prohibited routine inspections by any government regulatory or inspection agency of corporate property without a warrant or prior permission, even though scheduling such visits may permit a company to hide threats to public health and safety. (*Marshall v Barlow's*, 1978)
- The case *International Dairy v. Amnestoy*, [pdf] 1996) struck down state laws requiring companies to disclose product origins, thus creating "negative free speech rights" for corporations and preventing us from knowing what's in our food.

This decision was based on dairy manufacturers' First Amendment right "not to speak." In other words, corporations have the right not to disclose information.

The case was decided by the U.S. Court of Appeals, Second Circuit, not by the Supreme Court. This decision and its precedent only apply to the states in the Second Circuit.

- The case *Louis K. Liggett Co. v. Lee* 288 U.S. 517 (1933) prohibited citizens wanting to defend their local businesses and community from corporate chains' encroachment from enacting progressive taxes on chain stores.

The Supreme Court in this case overturned a Florida law that levied higher taxes on chain stores citing the Fourteenth Amendment Due Process and Equal Protection Clauses and the Interstate Commerce Clause.

- The case *First National Bank of Boston v. Bellotti* (1978) struck down state laws restricting corporate spending on ballot initiatives and referenda, enabling corporations to block citizen action through what, theoretically, is the purest form of democracy.

The Supreme Court in this case struck down a Massachusetts law that banned corporate spending to influence state ballot initiatives, even spending by corporate political action committees. Spending money to influence politics is now a corporate "right." The Supreme Court has recognized for the first time that the First Amendment free speech rights apply to corporations.

- In *Dodge v. Ford Motor Co.* 270 Fed. Appx. 200,2008 U.S. App. (1919) it was established that profit for the stockholders is the primary purpose of a corporation. In the suit, the stockholders wanted Ford to raise the price to allow for larger dividends to the stockholders. (This case was decided by the Michigan Supreme Court is legal precedent in the state of Michigan only.)



This idea that corporations' primary purpose is to make money has worked its way into our whole society. There are later Supreme Court cases in which the Supreme Court ruled in favor of the corporation because the cost to implement the safety regulations that a state law imposed is too much cost to the corporation. Thus the Supreme Court ruled that the corporation's operating costs are more important than a state's regulation of corporations for the safety of its citizens. One example of this type of decision is in the case *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945).

- **What are the specific forms of corporate personhood that we want to get rid of?**

The form of corporate personhood in which the U.S. Supreme Court has fabricated constitutional rights for corporations.

These constitutional rights are only for natural persons.

- **How will getting rid of this kind of personhood be beneficial?**

Removing the form of corporate personhood in which the U.S. Supreme Court gave constitutional rights to corporations will allow the people to once again regulate corporations and to make corporations accountable to the people. Furthermore, this will get corporations to once again operate under the constraints of their corporate charters.

What does it take to add an amendment to the Constitution?

- **What is the process to pass a constitutional amendment?**

Two Methods to Propose an Amendment:

Two-thirds vote in both Houses of Congress OR

Two-thirds of the State Legislatures call for a Convention

Two Methods to Ratify an Amendment:

Three-fourths of the State Legislatures ratify OR

Conventions in three-fourths of the States ratify.

U.S. Constitution, Article V --- Amendment

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.



<http://www.usconstitution.net/const.html#Article5>

http://en.wikipedia.org/wiki/Article_Five_of_the_United_States_Constitution

- **How long does it usually take?**

The length from the moment the amendments are approved by Congress until they are ratified by three-fourths of the states has ranged from 100 days (Twenty-Sixth Amendment) to more than 202 years (Twenty-Seventh Amendment). Eight amendments were ratified in less than a year's time. The time elapsing from the first public proposal of an amendment until Congress submits the measure to the states has ranged from a few months to several decades.

(<http://www.usconstitution.net/constamrat.html>)

- **Why is a constitutional amendment necessary right now?**

When the Supreme Court granted constitutional rights to corporations (corporate personhood) and declared that money is free speech, "we the people" lost control of our democracy and the ability to regulate corporations. The people's inability to control or regulate corporations allows them to do harm to real natural people, our society, and our environment for the purpose of making a profit for the corporations.

The Supreme Court created the legal concept of corporate personhood by giving *constitutional* rights to corporations. The Supreme Court is composed of nine justices who are not elected. This is a completely *undemocratic* process. A *democratic* process for deciding how to regulate corporations would be for the people, through our elected officials, to create *statutory* law.

- **Why can't Supreme Court rulings be overruled? / Why does it require a constitutional amendment?**

The Supreme Court resolves disputes that arise because laws contradict each other or because particular laws are ambiguous. When the Supreme Court bases a decision solely on its interpretation of statutes passed by Congress, rather than constitutional grounds, Congress can override the ruling by revising the laws with new language that forecloses the interpretation used by the court in the ruling. However, when a Supreme Court decision strikes down a statute on the grounds that it is in conflict with the Constitution, the ruling can be altered only by a later decision of the Supreme Court or by a constitutional amendment. The Supreme Court rulings that created constitutional rights for corporations and equated money with speech were based on the court's interpretation of the Constitution and, therefore, cannot be overturned by Congress.

<http://www.supremecourt.gov/about/constitutional.aspx>

<http://theincidentaleconomist.com/wordpress/faq-how-to-overrule-a-us-supreme-court-decision/>



- **What is the most recent amendment to the Constitution?**

The most recent amendment, the Twenty-Seventh Amendment --- limiting changes to congressional pay --- was ratified in 1992. This amendment also took the longest to be ratified --202 years!

The Twenty-Seventh Amendment was originally proposed on September 25, 1789, as an article in the original Bill of Rights. It did not pass the required number of states with the articles we now know as the first ten amendments. It sat, unratified and with no expiration date, in constitutional limbo, for more than 80 years when Ohio ratified it to protest a congressional pay hike; no other states followed Ohio's lead, however. Again it languished, for more than 100 years. In 1978, Wyoming ratified the amendment, but there was, again, no follow-up by the remaining states. Then, in the early 1980s, Gregory Watson, an aide to a Texas legislator, took up the proposed amendment's cause. From 1983 to 1992, the requisite number of states ratified the amendment, and it was declared ratified on May 7, 1992 (74,003 days).

<http://www.usconstitution.net/const.html#Am27>

- **What was the fastest constitutional amendment passed?**

The fastest constitutional amendment passed was the Twenty-Sixth Amendment, lowering the voting age for all elections to 18 years. It was approved by the House and Senate in March 1971 and ratified by the required number of states by July 1971.

<http://theusconstitution.org/text-history/2847>; <http://democracyday.com/the-26th-amendment.html>; <http://www.usconstitution.net/constamrat.html>

http://en.wikipedia.org/wiki/List_of_amendments_to_the_United_States_Constitution

- **How do the various proposed amendments compare with each other and with Move to Amend's proposed Amendment?**

Several organizations are proposing constitutional amendments similar to the one proposed by Move to Amend. One proposed amendment only proposes overturning "Citizens United." Other proposals only deal with limiting money in politics or only overturning "money equals speech." It is extremely important to our democracy that any constitutional amendment proposes abolishing both "corporate personhood" and "money equals speech."

Move to Amend describes the various amendments and their deficiencies on the following website.

<http://movetoamend.org/other-amendments#edwards>

The following website lists all current proposed amendments before Congress.

<http://www.united4thepeople.org/amendments.html>

**Move to Amend: Local resolutions, passed or in progress, in California
(Including summary of national resolutions)
Listed on MTA National website, 9/3/2012 UPDATED**

In California:

State Legislature passed AJR 22, July 5, 2012

26 Municipal Government Resolutions passed, 11 in progress

2 Ordinances passed

2 University Resolutions passed

3 Citizens Initiatives in progress

26 Municipal Government Resolutions passed, 11 in progress

Passed	1 MR	Albany, CA City Council Municipal Government Resolution
Passed	2 MR	Arcata, CA City Council Municipal Government Resolution
Passed	3 MR	Berkeley, CA Municipal Government Resolution
Passed	4 MR	Campbell, CA City Council Municipal Government Resolution
Passed	5 MR	Chico, CA City Council Municipal Government Resolution
Passed	6 MR	Fairfax, CA Municipal Government Resolution
Passed	7 MR	Fort Bragg, CA Municipal Government Resolution
Passed	8 MR	Los Altos Hills, CA City Council Municipal Government Resolution
Passed	9 MR	Los Angeles, CA City Council Municipal Government Resolution Marin County, CA Board of Supervisors Municipal Government
Passed	10 MR	Resolution
Passed	11 MR	Marina, CA Municipal Government Resolution
Passed	12 MR	Mountain View, CA City Council Municipal Government Resolution
Passed	13 MR	Nevada City, CA City Council Municipal Government Resolution
Passed	14 MR	Oakland, CA City Council Municipal Government Resolution
Passed	15 MR	Ojai, CA City Council Municipal Government Resolution
Passed	16 MR	Oxnard City Council Municipal Government Resolution
Passed	17 MR	Petaluma, CA Municipal Government Resolution Plumas County, CA, Board of Supervisors Municipal Government
Passed	18 MR	Resolution
Passed	19 MR	Point Arena, CA Municipal Government Resolution
Passed	20 MR	Redlands, CA City Council Municipal Government Resolution
Passed	21 MR	Richmond, CA City Council Municipal Government Resolution
Passed	22 MR	San Francisco, CA City Council Municipal Government Resolution
Passed	23 MR	Santa Cruz, CA Municipal Government Resolution

**Move to Amend: Local resolutions, passed or in progress, in California
(Including summary of national resolutions)
Listed on MTA National website, 9/3/2012 UPDATED**

2

**3 State Resolution passed, 4 in progress
10 Citizens Initiatives passed, 19 in progress
1 Initiative Referral passed, 7 in progress
136 Municipal Government Resolutions passed, 45 in progress
19 Ordinances passed**

THE Nation.

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Why the ACLU Is Wrong About 'Citizens United'

Burt Neuborne | March 21, 2012

I've marched proudly behind the ACLU's First Amendment flag for almost fifty years. On campaign finance reform, however, I believe the ACLU's adamant opposition to limits on massive campaign spending by the superrich gets the constitutional issues wrong. Limiting the power of a few individuals and corporations that exercise disproportionate political influence solely because of their enormous wealth has nothing to do with censoring a speaker's message; it is desperately needed to preserve the integrity of the egalitarian democracy the First Amendment was designed to protect.

The campaign finance mess rests on three erroneous arguments the ACLU advanced in the 1976 *Buckley v. Valeo* case before the Supreme Court: (1) that spending unlimited amounts of money in an electoral campaign is "pure" speech entitled to the highest level of First Amendment protection; (2) that any attempt to equalize political power by limiting massive electoral spending by the superrich is flatly unconstitutional; and (3) that "independent" expenditures on behalf of a candidate (as opposed to contributions to the candidate) are incapable of corrupting the democratic process. In 2010, in *Citizens United*, five Supreme Court justices made the *Buckley* system even worse by ruling that corporations have the same electoral free-speech rights as individuals, which unleashed a torrent of electoral spending by corporations seeking a financial return on their political investments.

I confess to having supported the ACLU position in *Buckley*. As the corrosive effects on democracy of uncontrolled campaign spending became increasingly clear, however, I joined several former ACLU leaders—Norman Dorsen, Aryeh Neier, John Shattuck and Mort Halperin—in opposing the organization's campaign finance position. We have argued, before the Supreme Court and the ACLU board, that spending massive amounts of money during an election campaign is not "pure" speech when the spending level is so high that it drowns out competing voices by repeating the same message over and over at higher decibel levels; that a compelling interest in equality justifies preventing wealthy speakers from buying up an unfair proportion of the speech in settings like courtrooms, classrooms, town meetings, presidential debates and elections; that massive campaign spending by "independent" entities poses a serious risk of postelection corruption; and that corporations lack the attributes of conscience and human dignity that justify free-speech protection.

We'll keep repeating those arguments. The shift of a single vote on the Supreme Court will make

them law one day. But we needn't wait for a new Court. The State of Montana has leveled a powerful challenge to *Citizens United* that is making its way to the Court. Since 1912, in an effort to shield its democracy from a takeover by out-of-state mining interests, Montana has banned corporate political spending. When the Montana Supreme Court recently stubbornly upheld the corporate electioneering ban in the teeth of *Citizens United*, corporations asked the US Supreme Court to overturn the Montana Court without a hearing. Instead, the justices temporarily stayed the Montana law and invited the parties to file papers discussing whether the case should be accepted for full-scale review. In reluctantly voting to stay the Montana statute even temporarily, justices Ruth Bader Ginsburg and Stephen Breyer asserted that *Citizens United* should be reconsidered because massive "independent" spending in the 2012 presidential election has undercut the assumption that such spending is incapable of corrupting democracy. The absurdity of the fiction that election winners will ignore huge debts owed to wealthy supporters who have spent millions to get them elected is now apparent even to the Supreme Court. In *Caperton v. A.T. Massey Coal Co.* (2009), the Court recognized that massive independent spending by a litigant to elect a member of the West Virginia Supreme Court risked influencing his postelection rulings, requiring the judge to step down in cases involving his electoral sugar daddy. Step one in untangling the current mess is persuading the Supreme Court that in light of the experience in the 2012 presidential election, unlimited independent campaign expenditures pose a significant risk of postelection corruption of elected legislators and executive officials, as well as elected judges.

Second, in *Citizens United* Justice Anthony Kennedy responded to the argument that corporations lack the attributes of conscience and human dignity needed for free-speech protection by insisting that First Amendment protection does not depend on the speaker's identity. As long as a speaker is generating speech of value to voter/hearers, Kennedy argued, the speech itself enjoys protection. Like Yeats (and the Eagles), Justice Kennedy declined to separate "the dancer from the dance." The Court has swept away that prop for *Citizens United*. In *Bluman v. FEC*, a Canadian graduate of an American law school working at a New York law firm and an Israeli citizen working as a medical resident argued that the Congressional ban on independent electoral spending by lawful resident aliens violates the First Amendment. In January all nine justices rejected the resident aliens' First Amendment claim without even issuing an opinion. Frankly, it isn't surprising that the justices disposed of *Bluman* without an opinion. You just cannot write a principled opinion distinguishing corporate speakers from resident alien speakers without jettisoning Kennedy's insistence that the speaker's identity doesn't matter. Step two in untangling the campaign finance mess is to recognize that after *Bluman*, the identity of the speaker matters a good deal. *Bluman* makes it much easier to question whether corporations, lacking the attributes of human dignity, should be treated as protected First Amendment speakers, especially when more than a century ago the Supreme Court denied them the Fifth Amendment right to remain silent in *Hale v. Henkel*, precisely because corporations lack the attributes of human dignity.

Finally, Kennedy's *Citizens United* opinion rested on the assumption that voters would know who was bombarding them with corporate electoral speech. But disclosure laws are riddled with loopholes permitting huge electoral spenders—corporate and human—to avoid or delay disclosure. *Citizens United* does not forbid plugging the loopholes, but it has proven impossible to persuade cash-addicted politicians to go cold turkey on secret cash. Since both *Buckley* and *Citizens United* were premised on protections provided by imaginary full-disclosure rules that will never be enacted, step three in fixing the mess is to persuade the Court that unless and until full disclosure is attained, the contingent rights described in *Citizens United* should not exist.

So, here's a modest proposal for our friends at the ACLU from its past leaders. Join us in filing a

Supreme Court brief supporting Montana's right to shield its democratic processes from corporate takeover. Almost forty years of experience teaches that the ACLU's campaign finance policies are well intentioned but mistaken. It takes a truly great organization to admit a mistake. But then, the ACLU is a truly great organization.

Source URL: <http://www.thenation.com/article/166954/why-aclu-wrong-about-citizens-united>

DRAFT

EXCERPT FROM HUMAN RELATIONS COMMISSION – SEPTEMBER 13, 2012

3. DISCUSSION AND ACTION ON RESOLUTION THAT CORPORATIONS ARE NOT PEOPLE AND MONEY IS NOT SPEECH PRESENTED BY SANTA CLARA COUNTY MOVE TO AMEND.

Presented by Santa Clara County Move to Amend

Santa Clara County Move to Amend returned to the HRC to re-present their request that the HRC endorse a draft resolution and to forward the resolution to the City Council with the endorsement of the HRC.

Ms. Mary Klein, Palo Alto resident, spoke and set the legal historical context. Corporations are not people and money is not speech these are to say corporations are not people in the same sense that natural humans are people and money is not speech itself but a tool to amplify a speech.

Ms. Klein said the first ten amendments to US constitution as well as 14th amendments were written for the purpose of giving legal clarity to the rights of natural people. These Amendments were not written with any concern of any rights of corporations.

Ms. Klein said that the people need to clarify the constitution and to clarify the constitution's purpose is to define democratic relationships among natural people to govern themselves. The corporations do not have the same rights under the constitution as natural people do.

Ms. Debbie Mytels, a Palo Alto resident, said the group is asking for regulations and limitations on corporation as an artificial construction of human society. Also spoke about the importance of these entities being regulated.

Ms. Mytels spoke about why this issue matters to Palo Alto and also why local government should address it: Two reasons for Palo Alto to add voice: First reason, local government and political decisions are vulnerable to disruption by massive corporate contributions to campaigns and other processes. Second reason, a change will not happen at the national level without strong local support. Ms. also talked about 2 methods to add amendment to the constitution.

Comments from public:

Ms. Diane Rolphe, Palo Alto resident, called upon the HRC to uphold the resolution and said the democracy is impaired and threatened.

Ms. Edie Keating said this is a very local issue and gave examples that corporate or business influences are too strong and their impact locally.

Ms. Stephanie Reader, President of peace and justice, (have to listen again on this)
Any questions about the issues raised by ACLU's position.

Mr. Gerry G. said the democracy is in a distress and many people believe corporation is part of the problem.

Ms. Nancy Neff, Board member of California Clean Money campaign said Clean Money Campaign endorses the efforts to amend the constitution and encourage supporting this and asking the city council to support as well.

Ms. Susan Stewart spoke about the extreme difficulty for the court to revisit this issue. Ms. Stewart talked about the avenue to try to curtail the concept that the corporations have the same rights as people.

Chair Ezran noted 2 things to discuss and decide upon:

1. Whether HRC to endorse the resolution
2. If endorse, then discuss whether to refer resolution to City Council with HRC endorsement.

HRC Chair Claude Ezran was persuaded by Supreme Court Justice John Paul Stevens's dissent summary of Citizens United vs. Federal Communication Commission. Chair Ezran believes that saying that corporations are people defies common sense. People are influenced by political ads and heavy spending by corporations can drown out any other voice; he feels that this is undemocratic. All these arguments apply to Palo Alto at the local level, for instance PG&E contributed close to \$50M for Proposition 16 which, if passed, would have made it much harder for municipalities to start or expand their own power utility. Chair Ezran believes that starting at local level will be effective. Corporations are motivated by profit and while there is nothing wrong with this, they do not have same interest as the rest of the people. Corporations do not have the national interest in mind and they don't have the best interest of people in mind. Commissioner Ray Bacchetti made a comment that local elections are not easily bought and people don't think of it. So this resolution is a way of starting something that is a benefit to the nation at the level where it has a best chance of being thoughtfully considered rather than influenced by someone with a particular outcome.

1. Motion to approve by Commissioner Bacchetti and seconded by Commissioner Verma. Motion passed unanimously with Commissioner Savage absent.

2. Commissioner Bacchetti motion to move forward resolution to the City Council to approve, seconded by Commissioner Verma. Motion passed unanimously with Commissioner Savage absent.

Resolution No. _____

Resolution of the Council of the City of Palo Alto In Support Of An
Amendment To the United States and California Constitutions
To State That Corporations Are Not People and Money Is Not Speech

- A. Democracy means governance by the people, the citizens of the City of Palo Alto, who hope to protect democracy in our community and our nation.
- B. Corporations are artificial entities separate from human beings and are not naturally endowed with conscience or the rights of human beings, yet they are creations of law and are only permitted to do what is authorized under law.
- C. Corporations are not mentioned in the United States Constitution, and the People have never granted constitutional rights to corporations.
- D. Corporations claim to be persons, possessing the rights of personhood, including free speech and other constitutional freedoms guaranteed by the Bill of Rights and the 14th Amendment to the Constitution of the United States.
- E. Corporations have unduly influenced and unfairly interfered with democratic processes by pressuring our legislators and dominating election campaigns with virtually unlimited contributions.
- F. When freedom to speak is equated with freedom to spend money, millions of people who have less money are essentially disenfranchised, as their free speech is overwhelmed by the message of those spending millions of dollars.

NOW, THEREFORE, the Council of the City of Palo Alto does hereby resolve, as follows:

SECTION 1. The Council of the City of Palo Alto, on behalf of the Palo Alto community, hereby proclaims its support for a call to amend the Constitutions of the United States and California to establish that:

- A. Only human beings, not corporations, are endowed with rights that are protected by the constitution.
- B. Money is not speech, and therefore the expenditure of money to influence the electoral process is not a form of constitutionally protected speech and may be regulated.

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NOT YET APPROVED

SECTION 2. The Council of the City of Palo Alto hereby calls on our state and federal representatives to enact resolutions and legislation to advance this effort.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENTIONS:

ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

Senior Asst. City Attorney

City Manager

Director of Utilities

Director of Administrative Services

Gonsalves, Ronna

From: David Greene <dg@BayAreaResearch.org>
Sent: Monday, October 15, 2012 4:15 PM
To: Council, City
Subject: Palo Alto for a 28th Amendment: Corporations are not people. Money is not speech.

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

12 OCT 17 AM 9:48

Dear Council Members:

I strongly support this resolution and urge the City Council to pass it. I have watched with dismay over the last 30 years as the country I love has been overtaken by multinational corporations transforming the government to serve their own purposes. By now the Supreme Court has decided enough cases on the grounds of Corporate "Personhood" and equating money with speech so that the political process is profoundly corrupted. Move to Amend brilliantly isolates the phrasing of a Constitutional Amendment that cuts to the heart of this issue.

Respectfully,

David Greene
3144 David Avenue
Palo Alto, CA 94303
(650) 493-4425
dg@BayAreaResearch.org

Minor, Beth

From: Steve Rosenblum(pol1) <pol1@rosenblums.us>
Sent: Friday, October 12, 2012 1:15 PM
To: Council, City
Subject: For a 28th Amendment to US Constitution

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
12 OCT 15 AM 8:16

Dear City Council members:

I was very happy to learn that you are considering adopting a resolution to put Palo Alto on record as supporting a 28th amendment to the Constitution eliminating corporate personhood and reversing the disastrous Supreme Court Citizens United decision. The flow of unlimited corporate money to superpacs has been a calamity for our democracy.

Stephen Rosenblum
212 Santa Rita Ave
Palo Alto