

City of Sequim, Washington
Resolution No. R-2013-02

A Resolution Recommending that the Washington State Legislature propose a United States Constitutional Amendment

WHEREAS, the United States Supreme Court issued an opinion in Citizens United vs. Federal Elections Commission, 558 U.S. 310, 130 S.Ct. 876 (2010), and

WHEREAS, the Sequim City Council finds that such decision could adversely affect fair election campaigning for federal, state and local elections, including those for Sequim City Council and other Sequim ballot issues; and

WHEREAS, the Sequim City Council finds that a Constitutional amendment to effectively overrule this decision would benefit the City,

NOW, THEREFORE, be it resolved by the City Council of the City of Sequim that

1. The City Council recommend to the State Legislature that it propose an amendment to the United States Constitution as follows:

Nothing in this constitution shall be interpreted to limit the power of the United States Government or the States to regulate the speech of corporations or of other non-human entities.

Adopted by the City Council this 28th day of January, 2013.



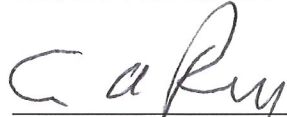
Ken Hays, Mayor

ATTEST:

APPROVED AS TO FORM:



Karen Kuznek-Reese, MMC, City Clerk



Craig A. Ritchie, City Attorney

**SEQUIM CITY COUNCIL
AGENDA COVER SHEET**

MEETING DATE: January 28, 2013

FROM: Craig Ritchie, City Attorney

CAR
Initials

SUBJECT/ISSUE: Discuss options for “Move to Amend” Citizens United Issue

Discussion dates	January 14, 2013			
CATEGORY	<input type="checkbox"/> City Manager Report	<input type="checkbox"/> Information Only	Time Needed for Presentation	
	<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Consent Agenda		
	<input checked="" type="checkbox"/> Unfinished Business	<input type="checkbox"/> New Business		
Reviewed by	Initials		Date	
Steve Burkett, City Manager	SCB		1/23/13	

PROBLEM/ISSUE STATEMENT: City Council members asked that this issue be brought back for further and broader audience and Council discussion with a Resolution which is clearer and more narrowly drawn than Port Townsend’s which was presented at the last meeting.

LIST OF ATTACHMENTS:

1. [Alternate Resolution proposing Constitutional Amendment](#)
2. [Alternate Resolution expressing concern and asking citizens to express their views](#)
3. [Analysis of issues](#)

DISCUSSION/ANALYSIS:

Speakers at the City Council meetings on December 10, 2012 and January 14, 2013 requested that the Council adopt a resolution supporting an amendment to the U.S. Constitution regarding the status of corporations. Although the term “corporation” does not appear once in the Constitution, the U.S. Supreme Court has long interpreted the term “persons” to include corporations, and has endowed corporations with many constitutional protections.

A document is attached with a synopsis of the issues raised by this request.

At the December 10th meeting, the City Council agreed to discuss the issue during the regular meeting with the Mayor and Mayor Pro Tem, and place it on the agenda for the January 14th meeting. This was to include a discussion of a process to use to obtain more information concerning this matter. At the January 14th meeting, the Council recognized that broader input on this topic would be desirable before making a decision and that a more limited resolution might be worth considering.

The resolution adopted by the City of Port Townsend was presented to the Council at the last meeting for information and discussion. Two proposed revised resolutions are also attached. The Council may choose to:

- (1) Adopt a Resolution proposing a Constitutional Amendment
- (2) Adopt a Resolution expressing concern and asking citizens to express their views
- (3) Elect not to make a statement or adopt a Resolution.

RECOMMENDATION:

For Council discussion.

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WHEREAS, the Sequim City Council finds that such decision could adversely affect fair election campaigning for federal, state and local elections, including those for Sequim City Council and other Sequim ballot issues; and

WHEREAS, the Sequim City Council finds that a Constitutional amendment to effectively overrule this decision would benefit the City,

NOW, THEREFORE, be it resolved by the City Council of the City of Sequim that

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Nothing in this constitution shall be interpreted to limit the power of the United States Government or the States to regulate the speech of corporations or of other non-human entities.

Adopted by the City Council this ____ day of _____, 2013.

Ken Hays, Mayor

ATTEST:

APPROVED AS TO FORM:

Karen Kuznek-Reese, MMC, City Clerk

Craig A. Ritchie, City Attorney

City of Sequim, Washington
Resolution No. R-2013-02

A Resolution Stating Objection to Citizens United and Big Money Influencing Elections

WHEREAS, the United States Supreme Court issued an opinion in Citizens United vs. Federal Elections Commission, 558 U.S. 310, 130 S.Ct. 876 (2010) which supported corporations spending money to influence elections, and

WHEREAS, the Sequim City Council finds that such decision could increase the influence of money in election campaigning for federal, state and local elections, including those for Sequim City Council and other Sequim ballot issues;

NOW, THEREFORE, be it resolved by the City Council of the City of Sequim that:

The City Council believes that the Citizens United decision could allow corporations and “big money” to improperly influence elections and encourages its citizens and Council members to individually express their views on this issue to their Congressional leaders.

Adopted by the City Council this ____ day of _____, 2013.

Ken Hays, Mayor

ATTEST:

APPROVED AS TO FORM:

Karen Kuznek-Reese, MMC, City Clerk

Craig A. Ritchie, City Attorney

Synopsis of Citizens United issues

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), a landmark United States Supreme Court case in which the Court held that the First Amendment prohibited the government from restricting independent political expenditures by corporations and unions. The nonprofit group Citizens United wanted to air a film critical of Hillary Clinton and to advertise the film during television broadcasts in apparent violation of the 2002 Bipartisan Campaign Reform Act (commonly known as the McCain–Feingold Act or "BCRA").^[2] In a 5–4 decision, the Court held that portions of BCRA §203 violated the First Amendment.

The decision reached the Supreme Court on appeal from a July 2008 decision by the United States District Court for the District of Columbia. Section 203 of BCRA defined an "electioneering communication" as a broadcast, cable, or satellite communication that mentioned a candidate within 80 days of a general election or 30 days of a primary, and prohibited such expenditures by corporations and unions. The lower court held that §203 of BCRA applied and prohibited Citizens United from advertising the film *Hillary: The Movie* in broadcasts or paying to have it shown on television within 30 days of the 2008 Democratic primaries.^[1]^[3] The Supreme Court reversed, striking down those provisions of BCRA that prohibited corporations (including nonprofit corporations) and unions from spending on "electioneering communications".^[2]

The decision overruled Austin v. Michigan Chamber of Commerce (1990) and partially overruled McConnell v. Federal Election Commission (2003).^[4] The Court, however, upheld requirements for public disclosure by sponsors of advertisements (BCRA §201 and §311). The case did not involve the federal ban on direct contributions from corporations or unions to candidate campaigns or political parties, which remain illegal in races for federal office.^[5] (From Wikipedia "Citizens United")

A summary of the dissent is as follows:

Justice Stevens' dissent in Citizens United case - Summary

The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.

Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office...[t]he financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907...The Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty born of *Austin v. Michigan Chamber of Commerce*.

The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Our colleagues' suggestion that 'we are asked to reconsider Austin and, in effect, McConnell,' would be more accurate if rephrased to state that 'we have asked ourselves' to reconsider those cases.

Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.

[T]here were principled, narrower paths that a Court that was serious about judicial restraint could have taken.

The only relevant thing that has changed since Austin and McConnell is the composition of this Court.

It is likewise nonsense to suggest that the FEC's 'business is to censor'...the majority's characterization of the FEC is deeply disconcerting.

Under the majority's view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.

[I]n light of the Court's effort to cast itself as the guardian of ancient values, it pays to remember that nothing in our constitutional history dictates today's outcome. To the contrary, this history helps illuminate just how extraordinarily dissonant the decision is.

It might also be added 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.

All of the majority's theoretical arguments turn on a proposition with undeniable surface appeal but little grounding in evidence or experience, 'that there is no such thing as too much speech'...[i]n the real world, we have seen, corporate domination of the airwaves prior to an election may decrease the average listener's exposure to relevant viewpoints, and it may diminish citizens' willingness and capacity to participate in the democratic process.

The marketplace of ideas is not actually a place where items—or laws—are meant to be bought and sold[.]

Americans may be forgiven if they do not feel the Court has advanced the cause of self-government today.

At bottom, the Court's opinion is thus 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

Corporations are not mentioned in the U.S. Constitution. They are frequently mentioned in the Washington State Constitution. "Rights" have been given to corporations, LLCs, Associations and other entities for many years. The economy of the world depends upon

recognition of corporations and recognition of certain rights for corporations like the right to contract, own property and other rights. Free speech for corporations has been recognized long before the Citizens United case. States are free to limit the rights of corporations since corporations are creatures of the State.

Many persons do not like the decision in Citizens United. Many do not think the Constitution required such a decision. Some opposed to the decision believe that a Constitutional amendment which would nullify the decision is needed. The Move to Amend proposal is very broad. A more narrow amendment might be to state that nothing in the constitution shall be interpreted to limit the power of the U.S. Government or the States to regulate the speech of corporations or of other non-human entities.