



Memorandum

TO: RULES COMMITTEE

FROM: Councilmember Sam Liccardo
Councilmember Xavier Campos
Councilmember Donald Rocha

**SUBJECT: ADOPTION OF RESOLUTION
IN SUPPORT OF AN
AMENDMENT TO THE UNITED
STATES CONSTITUTION**

DATE: January 17, 2013

APPROVED

Don Rocha 1-17-13

RECOMMENDATION

Refer to the Elections Commission, and with the Commission's support, to the full council, the question of whether or not the City of San José should adopt a resolution calling for an amendment to the United States Constitution that states that, first, only individual human beings, not corporations nor other collective entities, enjoy the First Amendment protections the United States Constitution, and second, that money is not "speech" protected by the First Amendment.

BACKGROUND

The United States Supreme Court's decision in Citizen's United v. Federal Elections Commission ushered in a new era of politics. Corporate entities and special interests can spend unlimited amounts of money expressly advocating the election or defeat of a candidate or ballot measure, unfettered by longstanding and reasonable regulations to constrain the influence of money on voting outcomes. The practical effect of this decision on governance in San José, and on cities throughout the nation, appears self-evident. We have all witnessed how financial influences can distort the public policymaking process, and how it can disenfranchise the political will of the vast majority of American citizens. Without some reasonable regulation, money will exert plenary power over politics, and over policy outcomes.

We do not seek to scapegoat corporations, nor to preclude corporations from making campaign contributions, nor to prevent them from participating meaningfully in the political process. Rather, this resolution seeks to add San José to the growing list of communities and organizations--such as the U.S. Conference of Mayors, the legislatures of 11 states, and dozens of cities, including Los Angeles, San Diego, San Francisco, and Oakland--demanding to level the playing field that "big money" has so plainly distorted.

As recently as 1990, the U.S. Supreme Court upheld the right of public bodies to restrict corporate contributions in elections, observing that "corporate wealth can unfairly influence elections," and decrying

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“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 corporations’ political ideas.” Tellingly, even that Court’s conservative Chief Justice, William Rehnquist, joined in the majority opinion.

In light of the Supreme Court’s 2010 overturning of the Austin decision, the Constitution’s amendment process provides only remedy available to the public. Accordingly, San José should join the voices from across the nation in calling to reclaim a government for the people.

Resolution of the City Council of San Jose Calling for an Amendment to the U.S. Constitution

WHEREAS democracy means governance by the people, and so the citizens of the City of San Jose intend by this resolution to protect democracy in our community and our nation; and

WHEREAS corporations are not mentioned in the Constitution, and the people have never granted constitutional rights to corporations; and

WHEREAS corporations and other artificial entities are not human beings and are not naturally endowed with conscience or the rights of human beings, but are creations of law and must be permitted to do only what is authorized under law; and

WHEREAS corporations have claimed 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 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 corporations' political ideas" and therefore upheld limits on independent expenditures by corporations to influence elections; and

WHEREAS the United States Supreme Court in *Citizens United v. Federal Election Commission* (2010) reversed the decision in *Austin*, allowing unlimited corporate spending to influence elections and policy decisions; and

WHEREAS corporations have unduly influenced our democratic processes by pressuring our legislators and dominating election campaigns with virtually unlimited contributions; and

WHEREAS freedom to speak must not be equated with freedom to spend money, for then millions of people who have little money would be thereby disenfranchised because their free speech is overwhelmed by the message of Corporations spending millions of dollars;

NOW, THEREFORE, BE IT RESOLVED that the City Council of San Jose calls for an amendment to the Constitution of the United States to establish that

1. Only human beings, not corporations nor other artificial entities, are endowed with rights protected by the constitution, and

2. Money is not speech, and therefore the expenditure of money to influence elections is not a form of constitutionally protected speech and may be regulated.

BE IT FURTHER RESOLVED that the City Council of San Jose hereby calls on our federal and state elected representatives to approve this amendment in order to restore political power to the people of the United States.

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Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Ash Kalra

SUBJECT: RESOLUTION IN SUPPORT OF
AN AMENDMENT TO THE
UNITED STATES CONSTITUTION

DATE: May 3, 2013

Approved

Date

5/2/13

RECOMMENDATION

Adopt a resolution calling for an amendment to the United States Constitution.

BACKGROUND

I want to thank Councilmembers Liccardo, Campos and Rocha for bringing this issue forward. I share their concern that the United States Supreme Court's decision in Citizens United v. Federal Election Commission has opened the door for the further erosion of the democratic process and core democratic principles by expanding the role that corporate money plays in elections.

As Justice Stevens stated in his dissenting opinion, "A democracy cannot function effectively when its constituent members believe laws are being bought and sold." The decision gives corporations, special interest groups, and lobbyists even more power to bankroll legislative efforts that serve only their interests. This is an anathema to the basic principles of democracy.

I urge the Council to approve the adoption of a resolution stating that the City of San José firmly believes that money is not speech, and that all citizens, regardless of wealth, will not have their voices drowned out by a torrent of corporate and special interest dollars.



Memorandum

TO: MAYOR AND CITY COUNCIL

FROM: Councilmember Sam Liccardo

SUBJECT: ADOPTION OF RESOLUTION
IN SUPPORT OF AN
AMENDMENT TO THE UNITED
STATES CONSTITUTION

DATE: May 6, 2013

APPROVED

5-6-13

RECOMMENDATION

Adopt the attached resolution calling for a constitutional amendment, declaring that the expenditure of money in campaigns is not protected “speech” for First Amendment purposes, and that campaign contributions and expenditures may be limited and regulated by Congress, States, and, by implication, local governments .

BACKGROUND

Hundreds of cities and thirteen (13) state legislatures throughout the United States have approved resolutions to support a constitutional amendment to overturn the *Citizens United* decision. Along with the majority of Americans, these representative bodies recognize the perversity of according to corporations the same free speech protections as individuals. As Justice Stevens so simply and eloquently stated in his dissent in *Citizens United*, when the framers “constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind . . . not that of corporations.”

Differences have emerged from various corners about the appropriate language of such a resolution, and we don’t expect Council’s decision today to settle that matter. I submit for consideration an approach that accords most closely with my own concern: that unrestricted independent expenditures authorized by *Citizens United* will corrupt our electoral process at every level.

A debate among reasonable minds has developed over whether constitutional rights should be properly accorded to corporations—or for that matter, to partnerships, unions, or non-profit and religious groups. From that debate emerges an equally reasonable concern about unintended constraints that a constitutional “reaction” might have on traditional rights to association or religious freedom. Organizations speak on behalf of individuals for many reasons, sometimes (ironically enough) because individuals themselves are powerless unless they act in concert with others. We need not settle that debate, however, if we simply

focus on the fundamental error wrought not merely by *Citizens United*, but by almost 40 years of flawed jurisprudence dating to *Buckley v. Valeo* and its progeny: the notion that the expenditure of money is protected “speech.” As Justice Stevens observed, “money is property, it is not speech.”

As many of our sister city councils in California—including those in Los Angeles, San Diego, San Francisco and Oakland, the *Citizens United* decision has already had an enormously destructive effect on municipal politics, trivializing the voice and influence of individual voters. In calling for a constitutional amendment to overturn the *Citizens United* decision, we send a clear message that the City of San José expects City Hall to be accountable to voters, not to large campaign donors.

ESTABLISHING AS A POSITION OF THE CITY OF SAN JOSE THAT MONEY IS NOT SPEECH AND THAT CAMPAIGN CONTRIBUTIONS AND EXPENDITURES SHOULD BE REGULATED AND LIMITED, AND CALLING FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH THOSE POSITIONS

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, the United States Supreme Court held in *Buckley v. Valeo* (1976) that the appearance of corruption justified limits on contribution to candidates, but rejected other fundamental interests that the CITY OF SAN JOSE 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 expenditures because it found that the corruption or perception of corruption rationale was only applicable to 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 in *Austin v. Michigan Chamber of Commerce* (1990) recognized 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 corporations political ideas” and upheld limits on independent expenditures by corporations; and

WHEREAS, the United States Supreme Court in *Citizens United v. Federal Election Commission* (2010) reversed the decision in *Austin*, allowing unlimited corporate spending to influence elections, candidate selection and policy decisions and sway votes; 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; and

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

WHEREAS, 13 states and approximately 350 local governments throughout our country have passed resolutions or ballot initiatives which call for overturning the *Citizens United* decision, and/or a constitutional amendment establishing that money is not speech and/or similar reforms, and approximately 19 other states have such resolutions pending;

NOW, THEREFORE, BE IT RESOLVED that it is the position of the CITY OF SAN JOSE that to reverse the impacts of U.S. Supreme Court decisions such as Citizens United and Buckley, which have resulted in unlimited independent campaign expenditures by corporations and others, A CONSTITUTIONAL AMENDMENT IS NEEDED ESTABLISHING THAT money is not speech and campaign contributions and expenditures may be reasonably limited and regulated by Congress and the States without violating the U.S. Constitution; and

BE IT FURTHER RESOLVED that the CITY OF SAN JOSE calls on other communities to join with us in this action by passing similar Resolutions.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING FOR AN AMENDMENT TO THE UNITED STATES CONSTITUTION DECLARING THAT CORPORATIONS ARE NOT COVERED BY FIRST AMENDMENT AND MONEY IS NOT SPEECH

WHEREAS, democracy means governance by the people, and so the citizens of the City of San José intend by this resolution to protect democracy in our community and our nation; and

WHEREAS, corporations are not mentioned in the Constitution, and the people have never granted constitutional rights to corporations; and

WHEREAS, corporations and other artificial entities are not human beings and are not naturally endowed with conscience or the rights of human beings, but are creations of law and must be permitted to do only what is authorized under law; and

WHEREAS, corporations have claimed 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, 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 corporations' political ideas" and therefore upheld limits on independent expenditures by corporations to influence elections; and

WHEREAS, the United States Supreme Court in *Citizens United v. Federal Election Commission* (2010) reversed the decision in *Austin*, allowing unlimited corporate spending to influence elections and policy decisions; and

WHEREAS, corporations have unduly influenced our democratic processes by pressuring our legislators and dominating election campaigns with virtually unlimited contributions; and

WHEREAS, freedom to speak must not be equated with freedom to spend money, for then millions of people who have little money would be thereby disenfranchised because their free speech is overwhelmed by the message of Corporations spending millions of dollars;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The City of San José calls for an amendment to the Constitution of the United States to establish that:
 - A. Only human beings, not corporations nor other artificial entities, are endowed with rights protected by the First Amendment of the Constitution, and
 - B. Money is not speech, and therefore the expenditure of money to influence elections is not a form of constitutionally protected speech and may be regulated.

2. The City Council of San José hereby calls on our federal and state elected representatives to approve this amendment in order to restore political power to the people of the United States.

ADOPTED this _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk