

**DATE:** October 2, 2012  
**STAFF:** Dan Weinheimer,  
Bruce Hendee, Steve Roy

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**20**

**SUBJECT**

Resolution 2012-092 Supporting an Amendment to the United States Constitution That Would Limit Constitutional Rights to Natural Persons and Would State That Political Contributions and Expenditures Are Not Constitutionally Protected Speech.

**EXECUTIVE SUMMARY**

City Council has directed staff to present a resolution urging the City's representatives in the U.S. Congress to propose an amendment to the U.S. Constitution stating that: (1) only human beings, not corporations, are entitled to constitutional rights; and (2) money is not speech, and therefore regulating political contributions and expenditures is not equivalent to limiting political speech. In a U.S. Supreme Court decision, *Citizens United v. Federal Election Commission*, the court held that those portions of the Bipartisan Campaign Reform Act of 2002 that prohibited expenditures on "electioneering communications" by corporations were an unconstitutional infringement on the First Amendment rights of corporations<sup>1</sup>. In response to the *Citizens United* decision, some cities, states and individual lawmakers have proposed amending the U.S. Constitution in the manner described above.

**BACKGROUND / DISCUSSION**

The Bipartisan Campaign Reform Act of 2002 prohibited corporations and unions from using their general treasury to fund "electioneering communications" (broadcast advertisements mentioning a candidate) within 30 days before a primary or 60 days before a general election. The *Citizens United* decision held that portions of the Bipartisan Campaign Reform Act of 2002 that prohibited expenditures on electioneering communications by corporations were an unconstitutional infringement on the First Amendment rights of corporations. The *Citizens United* court held that the First Amendment does not permit restrictions on speech on the basis of the speaker's corporate identity. The court further held that the categorical ban on corporate political speech imposed by the applicable provisions of the Bipartisan Campaign Reform Act of 2002 could not be justified on the grounds that it was necessary to prevent *quid pro quo* corruption.

The *Citizens United* decision has resulted in several governmental entities and individual lawmakers proposing to amend the U.S. Constitution similar to or as described above. According to a website called "movetoamend.org", the list of local and state governments that have passed resolutions similar to the proposed resolution includes but is not limited to Boulder, CO, Seattle, WA, Telluride, CO, Albany, NY, Chicago, IL, and the State of Vermont.

**FINANCIAL / ECONOMIC IMPACTS**

This resolution should not have a practical impact on the Fort Collins business community or on local job creation.

**STAFF RECOMMENDATION**

City Council has requested consideration of this resolution. Staff does not have a recommendation

**PUBLIC OUTREACH**

This Resolution was offered by a citizen's group and reflects the goals of that group. No other public meetings or communication were held on this issue.

<sup>1</sup> 558 u.s. 310 (January 21, 2010).

RESOLUTION 2012-092  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
SUPPORTING AN AMENDMENT TO THE UNITED STATES CONSTITUTION THAT  
WOULD LIMIT CONSTITUTIONAL RIGHTS TO NATURAL PERSONS  
AND WOULD STATE THAT POLITICAL CONTRIBUTIONS AND EXPENDITURES  
ARE NOT CONSTITUTIONALLY PROTECTED SPEECH

WHEREAS, the guarantees in the First Amendment – freedom of religion, freedom of speech and of the press, the right to assemble and petition the government – secure the right of the people to democratic self-governance; and

WHEREAS, a corporation can exist in perpetuity and in many nations at once and is a legal entity that has no inherent rights, exists only in contemplation of law, and possesses only those properties that the charter of its creation confer upon it; and

WHEREAS, a corporation is not a citizen and is not entitled to vote; and

WHEREAS, since 1886, some have asserted that the Fourteenth Amendment, which was written to extend the rights of the people to the newly-freed slaves, also applies to corporations as “persons” entitled to “equal protection of the laws;” and

WHEREAS, in the Tillman Act of 1907, Congress rejected the notion that corporations have the same constitutional rights as natural persons when it prohibited campaign contributions by corporations in connection with political elections; and

WHEREAS, in 1976, the U.S. Supreme Court, while upholding limits on the size of campaign contributions that may be made by individuals, ruled that independent political expenditures constitute a form of speech that is protected by the First Amendment and cannot be limited; and

WHEREAS, in 2010, in *Citizens United v. FEC*, the Supreme Court in a 5-4 decision ruled that special-interest groups, labor unions, and corporations, as well as natural persons, have a right to make independent political expenditures, and that this right is protected by the First Amendment and cannot be limited; and

WHEREAS, the resulting explosion of independent political expenditures by corporations, which greatly affect a candidate’s chances of winning an election, is undermining our democracy.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council calls for our representatives in the U.S. Congress to propose an amendment to the Constitution stating that: (1) only human beings, not corporations, are entitled to constitutional rights; and (2) money is not speech; therefore, regulating political contributions and expenditures is not equivalent to limiting political speech.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins held this  
2nd day of October, A.D. 2012.

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Mayor

Attest:

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City Clerk