

ARTICLE 29

TWENTY-NINTH ARTICLE

Submitted by: Frank Farlow, Town Meeting Member, Precinct 4, David Klaftrler, Town Meeting Member, Precinct 12, and Heleni Thayre

To see if the Town will adopt the following resolution:

**Resolution concerning a constitutional amendment
to reverse Citizens United and control the influence of money in elections**

WHEREAS, the First Amendment to the United States Constitution was intended to protect the free speech rights of people, not corporations, which are entities created by the laws of states and nations;

WHEREAS, the public has a compelling public interest in preventing corruption and the appearance of corruption among elected officials;

WHEREAS, during the past three decades a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade and invalidate democratically enacted reforms;

WHEREAS, this corporate misuse of the First Amendment has reached its extreme conclusion in the Supreme Court's recent ruling in Citizens United v. Federal Election Commission, overturning longstanding precedent prohibiting corporations from spending their general treasury funds in federal, state and local elections;

WHEREAS, the Supreme Court's ruling in Citizens United has unleashed a torrent of corporate money in our political process unmatched by any campaign expenditure totals in United States history, e.g., in the 2012 Republican presidential primary "super PACs" made possible by the ruling have outspent the campaigns themselves and have effectively become their advertising arms;¹

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 that allow them to spend prodigious sums on campaign messages;

WHEREAS, the interests of large corporations are often in direct conflict with the essential needs and rights of human beings, and these corporations have used their judicially determined rights to reverse democratically enacted laws passed at the municipal, state and federal levels, rendering elected governments ineffective in

¹ http://en.wikipedia.org/wiki/Political_action_committee#Super_PACs and
<http://www.nytimes.com/2012/03/03/us/politics/super-pacs-not-campaigns-do-bulk-of-ad-spending.html>

protecting their citizens against corporate harm to the environment, public health, and workers' welfare;

WHEREAS, in 1864 President Abraham Lincoln wrote, "As a result of the war, corporations have been enthroned and an era of corruption will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the republic is destroyed";

WHEREAS, the Citizens United ruling thus presents a serious and direct threat to our democracy; and

WHEREAS, the people of the United States have previously used the constitutional amendment process to correct those egregiously wrong decisions of the Supreme Court that go to the heart of our democracy and self-government; Now, therefore,

BE IT RESOLVED that the Town Meeting of Brookline, Massachusetts, calls upon Congress to send to the states for their ratification an amendment to the United States Constitution which restores fair elections by granting to the federal and state governments the authority to regulate the raising and spending of money to influence elections and public policy, to allow public funding of elections, and to establish that corporations do not have free speech rights identical to those of real people; and

BE IT FURTHER RESOLVED that Town officials shall notify the following of this action by Town Meeting: the President of the United States, the Governor of the Commonwealth of Massachusetts, Brookline's congressional and state legislative delegations, *The Boston Globe* and the *Brookline TAB*.

PETITIONER'S ARTICLE DESCRIPTION

This resolution asks Congress to send to the states a constitutional amendment that restores to the federal and state governments the authority to regulate contributions and expenditures in elections and clarifies that corporations do not have free speech rights identical to those of individuals.

In the January, 2010, case *Citizens United v. Federal Elections Commission*, the Supreme Court struck down bipartisan federal legislation that had limited corporations from spending their general treasury funds on political expenditures. As a result, for-profit corporations may now spend unlimited amounts to influence elections at all levels of government. Further, by equating unlimited spending to influence elections with free speech, the decision effectively eliminated government's ability to place any limits on campaign spending.

The Court's action dramatically dilutes the voice of every American who does not control a large corporate treasury or a vast personal fortune. Corporate lobbyists and other powerful special interests, as well as the extraordinarily rich, are now able to threaten public officials at all levels with the possibility of unending negative campaign ads if

their agendas are not supported — and the voices of ordinary citizens are drowned out of the electoral process.

The potential impact on elections is enormous: if ExxonMobil had spent just two percent of its 2008 profits in the last presidential election, it would have outspent presidential candidates McCain and Obama *combined*.² Indeed, according to the *Washington Post*, spending on television ads by groups independent of the campaigns is already *five times* what it was during the entire Republican primary season four years ago.³ We're already seeing the avalanche of money resulting from the *Citizens United* case – by far the largest expenditures in the current Republican primary have been made by the super PAC of the leading candidate⁴, suggesting that Super PACs have already become kingmakers – and the negative effects will only increase.

For over a century, Congress and the states have limited the role of money in the political process due to its inevitable corrupting influence. This is no less important today.

Before sending a proposed constitutional amendment to the states, Congress must first approve it by a two-thirds vote in both houses. Three-quarters of the state legislatures (38 out of 50) must then ratify the amendment for it to succeed.

(An amendment may also be proposed by a national constitutional convention called for by two-thirds of the state legislatures, but this has never happened previously. A third possibility is ratification by conventions in three-quarters of the states. This has occurred only once, when Prohibition was repealed).

SELECTMEN'S RECOMMENDATION

The Board of Selectmen's recommendation will be included in a Supplemental Report to be mailed prior to the commencement of Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommendation will be included in a Supplemental Report to be mailed prior to the commencement of Town Meeting.

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² <http://www.tvweek.com/blogs/2009/09/the-us-supreme-court-heard-a-case-yesterday-that-could-affect-millions-and-millions-of-dollars-spent.php>

³ www.washingtonpost.com/politics/.../gIQA3dzjP_story.html

⁴ <http://www.opensecrets.org/pacs/superpacs.php>

ARTICLE 29

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 29 is a petitioned resolution that asks Congress to initiate a process of amending the constitution to reverse the Supreme Court's recent ruling in Citizens United v. Federal Election Commission and also asks that Congress establish that corporations, unions, and other organizations and associations do not have free speech rights identical to those of individuals.

In January, 2010 Citizens United v. Federal Election Commission decision prohibited the government from restricting independent political expenditures by corporations and unions. This ruling gave corporations and unions the same first amendment rights as individuals and opened the floodgates to unlimited spending in our elections by corporations and unions. Several cities and states are passing similar resolutions against corporate personhood. By adopting this resolution, Brookline will join these communities and declare that money is not speech and only natural persons have free speech rights in the electoral realm.

This Board agrees with the petitioners that corporate and union money should not dilute the voice of the American people. The Citizen United decision is a travesty and we have seen its effects in the current election cycle. The impacts of Super PACs in elections pose a great threat to the democratic process.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 5-0 taken on May 8, 2012, on the following motion:

VOTED: That the Town adopt the following resolution:

**Resolution concerning a constitutional amendment
to reverse Citizens United and control the influence of money in elections**

WHEREAS, the First Amendment to the United States Constitution was intended to protect the free speech rights of people, not corporations, which are entities created by the laws of states and nations;

WHEREAS, the public has a compelling public interest in preventing corruption and the appearance of corruption among elected officials;

WHEREAS, during the past three decades a divided Supreme Court has equated money and speech, permitting unlimited independent political expenditures by individuals and

corporations under the First Amendment right to free speech, enabling powerful interests to evade and invalidate democratically enacted reforms;

WHEREAS, the Citizens United v. Federal Election Commission decision by the Supreme Court is its most expansive interpretation to date regarding First Amendment rights for corporations, unions and other organizations and associations, overturning longstanding precedent prohibiting such entities from spending their general treasury funds in federal, state and local elections;

WHEREAS, Justice John Paul Stevens stated in his dissent to this decision that "[t]he 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...corrupting potential of corporate electioneering since the days of Theodore Roosevelt;

WHEREAS, the opinion of the four dissenting justices in Citizens United also 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 that allow them to spend prodigious sums on campaign messages;

WHEREAS, large corporations have often used their judicially determined rights to influence elections, legislation and public policy and to reverse democratically enacted laws passed at the municipal, state and federal levels, rendering elected governments ineffective in protecting their citizens against corporate harm to the environment, public health, and workers' welfare;

WHEREAS, the financing of elections is strikingly undemocratic, more than half of the \$60 million collected in this election cycle as of mid-March by super PACs coming from 24 wealthy individuals;

WHEREAS, in the 2012 Republican presidential primary, "super PACs" made possible by Citizens United have outspent the campaigns themselves and have effectively become their advertising arms despite being ostensibly "independent" of the candidates and their campaigns;¹

WHEREAS, political developments of the last few decades bring forcefully to mind President Lincoln's 1864 statement, "As a result of the war, corporations have been enthroned and an era of corruption will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the republic is destroyed";

WHEREAS, the Citizens United ruling thus presents a serious and direct threat to our democracy; and

WHEREAS, the people of the United States have previously used the constitutional amendment process to correct those egregiously wrong decisions of the Supreme Court that go to the heart of our democracy and self-government; Now, therefore,

BE IT RESOLVED that the Town Meeting of Brookline, Massachusetts, calls upon Congress to send to the states for their ratification an amendment to the United States Constitution which restores fair elections by

- granting to the federal, state and local governments the authority to regulate the raising and spending of money to influence elections, and to allow public funding of elections, and
- establishing that only natural persons have free speech rights in the electoral realm; and

BE IT FURTHER RESOLVED that Town officials shall notify the following of this action by Town Meeting: the President of the United States, the Governor of the Commonwealth of Massachusetts, Brookline's congressional and state legislative delegations, The Boston Globe and the Brookline TAB.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

BACKGROUND:

Many Americans, including President Obama, have expressed concern about the January 2010 Citizens United decision of the Supreme Court. That decision equated political contributions with free speech and permitted corporations, organizations and individuals to contribute unlimited amounts of money to political campaigns. Across the country, individuals, including those in elected positions, and organizations such as Move To Amend are pressing Congress to send to the states a constitutional amendment that restores the ability of federal and state governments to regulate the financing of election campaigns and specifies that only individuals, and not corporations and other entities, enjoy rights given to natural persons under the Constitution.

Petitioners Frank Farlow, David Klafter and Heleni Thayer have submitted Warrant Article 29 which is a resolution supporting a constitutional amendment to further these goals.

At the first hearing of the Advisory Committee subcommittee, petitioners explained that they were engaged in redrafting of the whereas clauses and asked our advice concerning those. Members felt that the whereas clauses should focus more on facts and less on the subjective ideas involved. The subcommittee members voted unanimously to support the

resolve clauses as they were originally submitted, but agreed to hold another hearing on the anticipated redraft of the resolution.

At the second hearing of the subcommittee on May 8, the petitioners presented a redrafted resolution where they characterized the changes to the whereas clauses as the removal of inflammatory language with more substance and less invective. They also explained that the resolve clauses had been tightened and simplified.

The subcommittee members agreed that the redrafted whereas clauses were more focused on factual material, more objective and even handed. One member thought that the resolve clauses were less legalistic and perhaps not as artful, but agreed that the changes in the resolution were an improvement.

DISCUSSION:

At the full Advisory Committee meeting on May 8, the discussion focused on the changes that the petitioners had made and factual information about the recent significant increase in election spending. The numbers of wealthy individuals, (as of mid March 2012, there were 24) who are spending huge sums, more than \$30 million, during this election cycle is expected to grow as we move closer to the election.

One member was concerned about the free speech rights of corporations and other organizations being curtailed in the second bullet of the first resolve clause and felt that that language was too ambiguous. The petitioners responded that the entire resolution relied on the dissent of Judge John Paul Stevens and other committee members pointed out that the specific language is not so crucial, that this resolution is essentially requesting that the Congress begin the process of amending the constitution and the language of this resolution will not be important in the Congressional writing of such an amendment. What is important is adding support and momentum toward making changes in the election financing laws.

The petitioners pointed out that the Supreme Court has allowed corporations and wealthy individuals unfettered influence in elections and the main point is to return the election processes to the hands of individual voters. The petitioners also informed the Advisory Committee that, as of May 8, 43 other municipalities in the Commonwealth of Massachusetts have supported similar resolutions.

RECOMMENDATION:

Realizing the growing and extreme influence of money in public elections and believing that democracy suffers when it is controlled by a very few, a substantial majority of the full Advisory Committee recommends FAVORABLE ACTION, by a vote of 20 – 2, on the amended resolution offered by the Selectmen.