

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ESTABLISHING AS A POSITION OF THE CITY OF SAN JOSE THAT ONLY HUMAN BEINGS HAVE CONSTITUTIONAL RIGHTS AND CALLING FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH THAT POSITION**

**WHEREAS**, the United States Constitution and the Bill of Rights are intended to protect the rights of human beings; and

**WHEREAS**, corporations can and do make important contributions to our society, but are not human beings; and

**WHEREAS**, the traditional and necessary rights and powers of corporations, such as ownership of property, ability to enter into legal transactions, ability of many persons to act as one, and many others, are provided for by state law and do not require creation of corporate rights in the constitution; and

**WHEREAS**, United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations"; and

**WHEREAS**, the opinion of the four dissenting U.S. Supreme Court justices in *Citizens United v. FEC* (2010) noted that corporations have special advantages not enjoyed by human beings, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets; and

**WHEREAS**, corporations usually put profits for shareholders ahead of concerns for the greater good of society while individual shareholders as natural persons balance their narrow self-interest and broader public interest when making political decisions; and

**WHEREAS**, the following are a few of many examples in which the will of the people has been frustrated by the Supreme Court's grant of constitutional rights to corporations:

1. *First National Bank of Boston v. Bellotti* (1978)—Corporations have First Amendment free speech rights, thus invalidating a state ban on corporations spending money to oppose referendums,

2. *Marshall v. Barlow's, Inc.* (1978)—The Fourth Amendment required OSHA inspectors to obtain a warrant before inspecting business premises, thus weakening regulatory enforcement by limiting "surprise" inspections,

3. *International Dairy Foods Assoc'n v. Amestoy* (1996)—Vermont's statute requiring all dairy products from cows given the synthetic growth hormone, rBST (a substance banned by the European Union, Canada and Australia because of health concerns as a possible carcinogen) carry a certain warning label infringed on corporation's First Amendment free speech right not to speak,

4. *Lorillard Tobacco Co. v. Reilly* (2001)—State regulations prohibiting smokeless tobacco or cigar advertising within 1,000 feet of a school or playground violated corporation's First Amendment commercial free speech rights,

5. *Murray Energy v. Public Citizen* (2014)—A corporation sued a public interest group that criticized the corporation because it blocked a health and safety rule for defamation, violation of privacy, and alleged that the *corporation* suffered mental anguish and emotional distress,

6. *Western States Petroleum Association challenge to City of Berkeley Municipal Code proposed amendment* (2014)—After a city council voted to put stickers on gas pumps to warn consumers that burning fuel contributes to global warming an oil industry group threatened to sue based on its corporate free speech rights,

7. *Reynolds Tobacco v. Food and Drug Administration* (2012)—Struck down graphic warning labels on cigarette boxes because they interfered with corporate speech,

8. *National Association of Manufacturers v. National Labor Relations Board* (2013)—A court approved a poster from the employer informing workers they had the right not to join a union, but struck down a rule requiring that a sign be posted informing workers of their right to form and join unions and bargain collectively, because the Constitution protects the corporation's right not to speak,

9. *Burwell v. Hobby Lobby Stores, Inc.* (2014)—A closely held corporation is a person under the Religious Freedom Restoration Act of 1993, therefore it could make health care decisions for employees such as denying them contraception services; and

**WHEREAS**, addressing corporate constitutional rights is necessary to correct situations such as these; and

**WHEREAS**, eight states and more than 450 local governments throughout our country have passed resolutions or ballot initiatives which call for a constitutional amendment establishing that corporations do not have constitutional rights;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT** it is the position of the City of San José that a Constitutional amendment is needed to establish that:

The rights protected by the Constitution of the United States are the rights of only natural persons; artificial entities established by the laws of any State, the United States, or any foreign state shall have no rights uniquely granted by this Constitution and are subject to regulation by the People, through Federal, State, or local law;

The rights and 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, except where absolutely essential to the individual's exercise of association, religion, or other constitutionally protected individual rights; 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.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Resolution Calling for an  
Amendment to the U.S.  
Constitution

**DATE:** June 4, 2015

## RECOMMENDATION

Consider adoption of a Resolution calling for an amendment to the Constitution of the United States declaring that only human beings have Constitutional rights.

## BACKGROUND

On May 27, 2015 the Rules Committee approved the referral of a Resolution calling for an amendment to the Constitution of the United States declaring that only human beings have Constitutional rights to the Council as recommended by Councilmember Kalra in his memo dated May 21, 2015.

Previously, on May 7, 2013 the Council adopted Resolution 76627, attached to this memo, calling for an amendment to the United States Constitution establishing that money is not speech and that campaign contributions and expenditures should be regulated and limited. Later, on August 28, 2014 Councilmember Kalra submitted a memo to the Rules Committee to refer to Council further discussion of Constitutional amendments beyond the statements in Resolution 76627. At the Rules Committee of September 3, 2014, then Vice Mayor Madison Nguyen moved Councilmember Kalra's memo but the motion failed when it did not obtain a second to the motion. The Rules Committee Agenda for September 3, 2014 was scheduled to be reviewed by the Council on September 23, 2014. At that time Councilmember Kalra requested that the Council take up the item and place it on a future agenda. The motion failed on a 5 to 5 vote of the Council.

## ANALYSIS

The United States Supreme Court has recognized the rights of corporate entities under various Amendments of the United States Constitution including the rights set forth in the recitals of the proposed resolution. The Resolution 76627 adopted in 2013 called for a constitutional amendment declaring that the expenditure of money is not protected speech under the First Amendment of the United States Constitution. The resolution proposed by Councilmember Kalra calls for a constitutional amendment that would state

June 4, 2015

**Subject: Resolution Calling for an Amendment to the U.S. Constitution**

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that "artificial entities" would not have the rights of persons under various Amendments of the United State Constitution. This Office has not evaluated the implications of the limitation or likelihood of success of the constitutional amendment requested in the proposed resolution.

**COORDINATION**

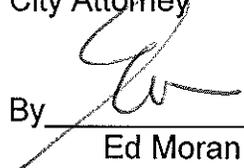
This matter has been coordinated with the Office of the City Manager.

**CEQA**

General Procedure & Policy Making Public Project number PP10-068.

RICHARD DOYLE

City Attorney

By 

Ed Moran

Assistant City Attorney

Attachment

cc: Norberto Dueñas

For questions please contact Ed Moran, Assistant City Attorney at (408) 535-1920.

**RESOLUTION NO. 76627**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING FOR AN AMENDMENT TO THE UNITED STATES CONSTITUTION ESTABLISHING THAT MONEY IS NOT SPEECH AND THAT CAMPAIGN CONTRIBUTIONS AND EXPENDITURES SHOULD BE REGULATED AND LIMITED**

**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 contributions to candidates, but rejected other fundamental interests that the City of San José 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 corporation's 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**, 13 states and approximately 350 local governments throughout the 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 BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

1. It is the position of the City of San José 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, and 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 Constitution.
2. The City Council of San José hereby calls on other communities to join with the City of San José in this action by passing similar Resolutions.

ADOPTED this 7<sup>th</sup> day of May, 2013, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO,  
NGUYEN; REED.

NOES: NONE.

ABSENT: CONSTANT, KHAMIS, OLIVERIO, ROCHA.

DISQUALIFIED: NONE.



CHUCK REED  
Mayor

ATTEST:



TONI J. TABER, CMC  
Acting City Clerk



COUNCIL AGENDA: 6-16-15  
ITEM: 3.6

# Memorandum

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Toni J. Taber, CMC  
City Clerk 

**SUBJECT:** SEE BELOW

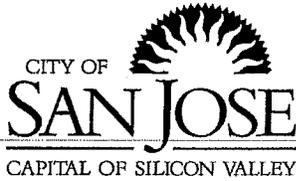
**DATE:** 6-3-2015

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**SUBJECT: RESOLUTION IN SUPPORT OF A CONSTITUTIONAL AMENDMENT  
OPPOSING CORPORATE PERSONHOOD**

## RECOMMENDATION

As recommended by the Rules and Open Government Committee on May 27, 2015 and outlined in the attached memo previously submitted by the Rules and Open Government Committee, discuss and consider adoption of a resolution calling for an amendment to the Constitution of the United States declaring that only human beings have Constitutional rights.



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Ash Kalra

**SUBJECT:** RESOLUTION IN SUPPORT OF A  
CONSTITUTIONAL AMENDMENT  
OPPOSING CORPORATE PERSONHOOD

**DATE:** May 21, 2015

Approved

Date

5/21/15

## RECOMMENDATION

Refer to Council for full discussion to adopt a resolution calling for an amendment to the Constitution of the United States declaring that only human beings have Constitutional rights.

## BACKGROUND

Since the 2010 Supreme Court decision in the *Citizen's United v. Federal Election Commission* case, there has been a growing concern that corporations, special interest groups and lobbyists are leveraging power with the use of campaign donations and other methods of financial influence. All these actions have been labeled as free speech, protected under the First Amendment. Under current law, corporations are be recognized at "people," vesting them with Constitutional rights that are afforded to American citizens of natural, human birth and existence. Yet, corporations benefit from special advantages not afforded to human beings, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets.

In late spring of 2013, the City Council adopted a 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." Although the Council action was an important step, it did not address corporate constitutional rights.

Most recently, the California State Legislature was able to add an advisory measure (Proposition 49) to address the issue of corporate personhood at the State level. Although it is currently being held up in the courts, the City's resolution to support a Constitutional amendment would demonstrate a grass roots level of support for the statewide measure, and, ultimately, Federal action to amend the Constitution of the United States.

I ask that my Council colleagues on the Rules Committee allow for open discussion of the topic for the benefit of our constituents at an upcoming City Council meeting.

**RESOLUTION ESTABLISHING AS A POSITION OF THE CITY OF SAN JOSE THAT ONLY HUMAN BEINGS HAVE CONSTITUTIONAL RIGHTS AND CALLING FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH THAT POSITION**

WHEREAS, the United States Constitution and the Bill of Rights are intended to protect the rights of human beings; and

WHEREAS, corporations can and do make important contributions to our society, but are not human beings; and

WHEREAS, the traditional and necessary rights and powers of corporations, such as ownership of property, ability to enter into legal transactions, ability of many persons to act as one, and many others, are provided for by state law and do not require creation of corporate rights in the constitution; and

WHEREAS, United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations"; and

WHEREAS, the opinion of the four dissenting U.S. Supreme Court justices in *Citizens United v. FEC* (2010) noted that corporations have special advantages not enjoyed by human beings, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets; and

WHEREAS, corporations usually put profits for shareholders ahead of concerns for the greater good of society while individual shareholders as natural persons balance their narrow self-interest and broader public interest when making political decisions; and

WHEREAS, the following are a few of many examples in which the will of the people has been frustrated by the Supreme Court's grant of constitutional rights to corporations;

1. *First National Bank of Boston v. Bellotti* (1978)—Corporations have First Amendment free speech rights, thus invalidating a state ban on corporations spending money to oppose referendums,

2. *Marshall v. Barlow's, Inc.* (1978)—The Fourth Amendment required OSHA inspectors to obtain a warrant before inspecting business premises, thus weakening regulatory enforcement by limiting "surprise" inspections,

3. *International Dairy Foods Assoc'n v. Amestoy* (1996)—Vermont's statute requiring all dairy products from cows given the synthetic growth hormone, rBST (a substance banned by the European Union, Canada and Australia because of health concerns as a possible carcinogen) carry a certain warning label infringed on corporation's First Amendment free speech right not to speak,

4. *Lorillard Tobacco Co. v. Reilly* (2001)—State regulations prohibiting smokeless tobacco or cigar advertising within 1,000 feet of a school or playground violated corporation's First Amendment commercial free speech rights,

5. *Murray Energy v. Public Citizen* (2014)—A corporation sued a public interest group that criticized the corporation because it blocked a health and safety rule for defamation, violation of privacy, and alleged that the corporation suffered mental anguish and emotional distress,

6. *Western States Petroleum Association challenge to City of Berkeley Municipal Code proposed amendment* (2014)—After a city council voted to put stickers on gas pumps to warn

consumers that burning fuel contributes to global warming an oil industry group threatened to sue based on its corporate free speech rights,

7. *Reynolds Tobacco v. Food and Drug Administration* (2012)—Struck down graphic warning labels on cigarette boxes because they interfered with corporate speech.

8. *National Association of Manufacturers v. National Labor Relations Board* (2013)—A court approved a poster from the employer informing workers they had the right not to join a union, but struck down a rule requiring that a sign be posted informing workers of their right to form and join unions and bargain collectively, because the Constitution protects the corporation's right not to speak,

9. *Burwell v. Hobby Lobby Stores, Inc.* (2014)—A closely held corporation is a person under the Religious Freedom Restoration Act of 1993, therefore it could make health care decisions for employees such as denying them contraception services, and

WHEREAS, addressing corporate constitutional rights is necessary to correct situations such as these; and

WHEREAS, eight states and more than 450 local governments throughout our country have passed resolutions or ballot initiatives which call for a constitutional amendment establishing that corporations do not have constitutional rights;

NOW, THEREFORE, BE IT RESOLVED that it is the position of the CITY OF SAN JOSE that A CONSTITUTIONAL AMENDMENT IS NEEDED TO ESTABLISH THAT

The rights protected by the Constitution of the United States are the rights of only natural persons; artificial entities established by the laws of any State, the United States, or any foreign state shall have no rights uniquely granted by this Constitution and are subject to regulation by the People, through Federal, State, or local law;

The rights and 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, except where absolutely essential to the individual's exercise of association, religion, or other constitutionally-protected individual rights; 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.



# Memorandum

**TO:** MAYOR AND CITY COUNCIL

**FROM:** Councilmember Ash Kalra

**SUBJECT: RESOLUTION IN SUPPORT  
OF A CONSTITUTIONAL  
AMENDMENT OPPOSING  
CORPORATE PERSONHOOD**

**DATE:** 6/15/15

Approved

Date

6/15/15

## RECOMMENDATION

Approve and adopt a resolution calling for an amendment to the United States Constitution.

## BACKGROUND

On May 27, 2015, the Rules Committee approved the referral of a Resolution calling for an amendment to the Constitution of the United States declaring that only human beings have Constitutional rights to the Council as recommended by my memo dated May 21, 2015.

Since the 2010 Supreme Court decision in the *Citizen's United v. Federal Election Commission* case, there has been a growing concern that corporations, special interest groups and lobbyists are leveraging power with the use of campaign donations and other methods of financial influence. All these actions have been labeled as free speech, protected under the First Amendment. Under the Supreme Court's interpretation of current law, corporations are to be recognized as "people," vesting them with Constitutional rights that are afforded to American citizens of natural, human birth and existence. Yet, corporations benefit from special advantages not afforded to human beings, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets.

In late spring of 2013, the City Council adopted a 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." Although the Council action was an important step, it did not address corporate constitutional rights.

Most recently, the California State Legislature was able to add an advisory measure (Proposition 49) to address the issue of corporate personhood at the State level. Although it is currently being held up in the courts, the City's resolution to support a Constitutional amendment would demonstrate a grass roots level of support for the statewide measure, and, ultimately, Federal action to amend the Constitution of the United States.

This resolution is not a trailblazing effort. More than 400 cities have adopted similar

resolutions. Attached is a memo prepared by Santa Clara County Move to Amend addressing the numerous concerns routinely raised by those opposing similar measures.

By adopting this resolution, we are not curtailing the rights of corporations to operate without legal protection. By adopting this resolution, we are affirming that this nation stands for a true democracy of the people, by the people and for the people.

**RESOLUTION ESTABLISHING AS A POSITION OF THE CITY OF SAN JOSE THAT ONLY HUMAN BEINGS HAVE CONSTITUTIONAL RIGHTS AND CALLING FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH THAT POSITION**

WHEREAS, the United States Constitution and the Bill of Rights are intended to protect the rights of human beings; and

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WHEREAS, United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations"; and

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WHEREAS, the following are a few of many examples in which the will of the people has been frustrated by the Supreme Court's grant of constitutional rights to corporations;

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2. *Marshall v. Barlow's, Inc.* (1978)—The Fourth Amendment required OSHA inspectors to obtain a warrant before inspecting business premises, thus weakening regulatory enforcement by limiting "surprise" inspections,

3. *International Dairy Foods Assoc'n v. Amestoy* (1996)—Vermont's statute requiring all dairy products from cows given the synthetic growth hormone, rBST (a substance banned by the European Union, Canada and Australia because of health concerns as a possible carcinogen) carry a certain warning label infringed on corporation's First Amendment free speech right not to speak,

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consumers that burning fuel contributes to global warming an oil industry group threatened to sue based on its corporate free speech rights,

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The rights and 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, except where absolutely essential to the individual's exercise of association, religion, or other constitutionally-protected individual rights; 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.

## MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Santa Clara County-Move to Amend

SUBJECT: Request for Resolution in Favor of Amending U.S. Constitution to  
Declare that Only Humans Have Constitutional Rights

DATE: June 2, 2015

### REQUEST

Santa Clara County Move to Amend (SCC-MTA) [1] requests that the San Jose City Council approve a Resolution advocating an amendment to the U.S. Constitution declaring that only human beings have constitutional rights. This resolution is necessary because human rights are becoming subordinated to the rights of powerful corporations.

(Bracketed numbers refer to end notes.)

### PROCEDURAL BACKGROUND

On May 7, 2013 the Council approved a resolution proposed by SCC-MTA in support of an amendment to the U.S. Constitution establishing that money is not constitutionally protected First Amendment free speech and therefore campaign contributions and expenditures may be regulated by Congress.

On September 23, 2014 the Council voted on virtually the same resolution now being proposed. It failed on a 5-5 vote because one of the Council Members supporting the resolution was absent.

Then-Council Member Sam Liccardo supported both resolutions and contributed language to the present resolution.

### HISTORICAL AND LEGAL BACKGROUND

1. "(A) corporation is a device by which people conduct business." [2]. They are artificial entities created by state *statute* for their benefits to people. The legitimate functions of corporations are for multiple people to act as one entity, to own property, to sue and be sued in a court of law, and enter into contracts. State statutes already provide for these functions. For example, the California Corporation Code [3], states "...a corporation shall have all of the powers of a natural person in carrying out its business activities..." Therefore corporations do not need constitutional rights to perform their legitimate functions. For an artificial creation that exists only under *statutory* law to be given *constitutional* rights that supersede those of humans is illogical.

2. But that is what the Supreme Court did, despite that the People never amended the Constitution to do so. The first Supreme Court case making this claim, *Santa Clara County v. Southern Pacific Railroad* [4], did not decide the issue [5], but opined that the 14th amendment gave corporations constitutional rights. However, the 14th Amendment was enacted to guarantee rights for then newly freed slaves and does not even mention corporations let alone give them the rights of persons.

3. Nor do history or earlier court decisions support constitutional rights for corporations. One of the causes of the American Revolution was unfair treatment of colonists by the East India

Company, a British corporation. Early Americans feared corporations and restrained them. [6] Corporations are not mentioned in the Constitution. Attempts to include them were voted down. Early American corporations had numerous restrictions on their power: chartered by states, not the federal government; limited lifespan; unlimited (sometimes double) liability; limited and often public purpose; and charter could be withdrawn by states.[7] Early Supreme Court cases did not recognize corporations as people. [8] The Supreme Court "rebuff[ed] early corporate efforts to create corporate rights" stating "State laws by combining large masses of men under a corporate name, cannot repeal the Constitution." [9]

4. Despite this history, in the *Citizens United v. Federal Election Commission* (2010) [10] decision, the Supreme Court threw out virtually all remaining restrictions on corporate campaign expenditures based on the purported constitutional rights of corporations.

### **CONSTITUTIONAL RIGHTS FOR CORPORATIONS HARM REAL PEOPLE**

In each of the following cases, the extension of constitutional rights to corporations resulted in, or will result in, a loss of rights of human beings. The U.S. Supreme Court decided numbers 1, 2, 4, and 9.

1. *First National Bank of Boston v. Bellotti* (1978) [11]: Corporations have First Amendment free speech rights, thus invalidating a state ban on corporations spending money to oppose referendums.
2. *Marshall v. Barlow's, Inc.* (1978) [12]: The Fourth Amendment required OSHA inspectors to obtain a warrant before inspecting business premises, thus weakening regulatory enforcement by limiting "surprise" inspections.
3. *International Dairy Foods Assoc'n v. Amestoy* (1996) [13]: Vermont's statute requiring all dairy products from cows given the synthetic growth hormone, rBST (a substance banned by the European Union, Canada and Australia because of health concerns as a possible carcinogen) carry a certain warning label infringed on corporation's First Amendment free speech right not to speak.
4. *Lorillard Tobacco Co. v. Reilly*, (2001) [14]: State regulations prohibiting smokeless tobacco or cigar advertising within 1,000 feet of a school or playground violated corporation's First Amendment commercial free speech rights.
5. *Murray Energy v. Public Citizen* (2014) [15]: A public interest advocacy organization ran a radio ad criticizing Murray Energy for suing to block a rule intended to save miners' lives by limiting the amount of coal dust miners were exposed to. So Murray Energy, a corporation, sued the group for defamation, violation of privacy, and alleged that the *corporation* suffered mental anguish and emotional distress. The case is pending.
6. *Western States Petroleum Association challenge to City of Berkeley Municipal Code proposed amendment* (2014) [16]: The City Council voted to put stickers on gas pumps to warn consumers that burning fuel contributes to global warming. The WSPA has threatened to sue based on its corporate free speech rights. The proposal to place stickers on gas pumps remains pending.
7. *Reynolds Tobacco v. Food and Drug Administration* (2012) [17]: Struck down graphic warning labels on cigarette boxes because they interfered with corporate speech.
8. *National Association of Manufacturers v. National Labor Relations Board* (2013) [18]: Court approved a poster from the employer informing workers they had the right not to join a union, but struck down a rule requiring that a sign be posted informing workers of their right to form and join unions and bargain collectively, because the Constitution protects the corporation's right not to speak.

9. *Burwell v. Hobby Lobby Stores, Inc.* (2014) [19]: A closely held corporation is a person under the Religious Freedom Restoration Act of 1993, therefore it could make health care decisions for employees such as denying them contraception services.

We must not underestimate the chilling effect on the free speech of those who might otherwise criticize or challenge corporate wrongdoing. Few individuals or non-profits can match powerful corporations in financial or legal resources. The extension of First Amendment rights to corporations has the effect of substantially reducing rights, including the rights of free speech, of citizens and public interest groups.

## **FREQUENTLY ASKED QUESTIONS**

### 1. Wouldn't this resolution harm the economy?

No. Corporations serve valuable purposes and play an important role in our economy. But adequate protections for the legitimate function of corporations already exist under state statutes. No reason exists for giving corporations the same or greater rights than the humans who created them and whom they are supposed to serve. In fact, this resolution would help small business and start-up companies such as those in Silicon Valley that do not have the resources or political clout that large corporations do.

### 2. Would such an amendment affect unions, non-profit corporations, and associations?

Yes, the amendment would apply to corporations and all artificial entities, including non-profit corporations, unions, and associations. However, stockholders and members of unions, non-profit organizations, and associations would retain their rights as individuals. In addition, association members would retain their freedom to associate under the 14th Amendment, and associations would have standing to assert their members' rights. *NAACP v. Alabama*, (1958)[20].

### 3. Would there be unintended consequences?

If there were, state legislatures could pass legislation to fix them. What is more troubling are the known intended consequences by corporations which the courts have ratified. See "Constitutional Rights for Corporations Harm Real People," above.

### 4. By establishing that corporations don't have constitutional rights, would the amendment subject corporations to unreasonable searches and seizures and denial of due process?

No, because corporations should be subject to surprise inspections to protect the public safety. Statutory protections, such as the Uniform Trade secrets Act, enacted in almost every state, including California, would remain in effect, and Congress and the state legislatures would be free to pass additional *statutory* protections for corporations if they deemed it necessary. As already noted, stockholders, corporate officers, and employees would retain all their constitutional rights to challenge any egregious state action.

### 5. Does the city charter allow the council to advocate for a constitutional amendment ?

The San Jose City Charter and the California Supreme Court recognize the ability of local government to take positions on matters even if the Council does not have the direct power to make the change sought. The San Jose City Charter, Section 200, provides "The City shall also

have *all other rights, powers and privileges which are not prohibited by, or in conflict with, the State Constitution or the Charter* and which it would be proper to specifically set forth in this Charter even though such are not herein set forth." (Emphasis added.) In *Farley v. Healey* (1967) [21] the registrar of voters of the City and County of San Francisco refused to place an initiative on the ballot which, as a "declaration of policy," urged an immediate cease fire and American withdrawal from Vietnam, despite that the requisite number of signatures had been collected. The California Supreme Court, found that "*(a)s representatives of local communities boards of supervisors and city councils have traditionally made declarations of policy of concern to the community whether or not they have the power to effectuate such declarations by binding legislation.*" (Emphasis added.)

6. Who else supports a constitutional amendment such as this?

Over 600 municipalities throughout the country and 16 states have called for a constitutional amendment to overturn *Citizens United*. [22] Presently, at least eight states (CT, HA, IL, MD, MT, NJ, VT, W.VA) and over 450 local governments support a constitutional amendment to limit constitutional rights to humans. [23] In May, 2013 L.A. passed Measure C which in part stated "corporations should not have the constitutional rights of human beings" by 76.6%. [24] In 2012 the Conference of Mayors passed a resolution entitled in part "corporations should not receive the same legal rights as natural persons do." Also in 2012 Santa Clara County cities went on record as follows: Campbell passed a Resolution with the same wording as the Conference of Mayors; Mountain View and Los Altos Hills passed Resolutions which advocated amending the Constitution to abolish corporate constitutional rights.

7. Isn't the resolution too general? Don't we need to see the actual language of the amendment?

Resolutions are by their nature more general than legislation. The Council is only being asked to agree or disagree with the language stated in the resolution.

8. Isn't passing an amendment virtually impossible because of the requirement to gain approval of two-thirds of each house of Congress and three-fourths of the state legislatures, therefore making passage of this resolution pointless?

Passing a constitutional amendment is not impossible; it has been done 27 times. Congress cannot enact this reform by itself because it is beholden to corporate interests. So We the People must do it. Our democracy is at stake. This resolution will serve an important purpose in educating and informing the people of this challenge to our democracy.

**CONCLUSION**

The extension of constitutional rights to corporations, a concept rejected by the Framers, has resulted in increasing domination by these powerful entities and a loss of rights for people. The City of San Jose should join many other local governments and respond to this dangerous and accelerating trend by approving a resolution stating that only human beings are endowed with Constitutional rights.

Thank you for your consideration.

## End Notes

1. Move to Amend is a private, non-profit, non-partisan, national, grassroots organization dedicated to pass an amendment to the U.S. Constitution establishing that (i) money is not constitutionally protected First Amendment free speech and therefore campaign contributions and expenditures may be regulated by Congress, and (ii) only human beings have rights under the Constitution; artificially-created entities of any kind (corporations, associations, unions) do not. Santa Clara County-Move to Amend is MTA's local affiliate group.
2. Hamilton and Freer, "The Law of Corporations," 2010, p. 33.
3. Section 207.
4. 118 U.S. 394 (1886).
5. *Id.* at pp. 416, 410, 411; Nace, chapt. 9.
6. See Ted Nace ("Nace"), "Gangs of America," Berrett-Koehler Publishers, 2003, chapters 3 and 4 (available online: <http://www.gangsofamerica.com/read.html>).
7. See Nace, chapter 5.
8. *Hope Insurance Co. v. Boardman*, 9 U.S. (5 Cranch) 57, 58 (1809) ("a body corporate as such cannot be a citizen within the meaning of the Constitution;" *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 636 (1819) (a corporation as a "mere creature of law . . . possesses only those properties which the charter confer upon it...;" *Bank of Augusta v. Earle*, 38 U.S. 519, 587 (1839) ([Corporation] cannot claim rights "which belong to its members as citizens of a state."))
9. Jeff Clements, "Corporations Are Not People," chapt. 3 in general and p. 66; *Marshall v. Baltimore & Ohio Railroad Company*, 57 U.S. 314 (1853).
10. 558 U.S. 310.
11. 435 U.S. 765.
12. 436 U.S. 307.
13. 92 F.3d 67 (2nd Cir.).
14. 535 U.S. 525.
15. Civ. No. 14-cv-235, Court of Common Pleas, Belmont County, Ohio.
16. [http://www.ci.berkeley.ca.us/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Community\\_Environmental\\_Advisory/2014%2006%2012\\_CE\\_AC\\_AGN\\_Item%20XII.b.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Community_Environmental_Advisory/2014%2006%2012_CE_AC_AGN_Item%20XII.b.pdf)
17. 696 F.3d 1205 (D.C. Cir.).
18. U.S. Court of Appeals (D.C. Circ.), Nos. 12-5068, 12-5138.
19. 573 U.S. \_\_\_\_.
20. 357 U.S. 449, pp. 458-459.
21. 67 Cal.2d 325, 328.
22. <http://united4thepeople.org/state-and-local-support/#Numbers>
23. <https://movetoamend.org/resolutions-map>; <http://freespeechforpeople.org/node/342>).
24. <http://www.smartvoter.org/2013/05/21/ca/la/meas/C/>.

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