

Sample Resolve Language for a Standard Resolution

(This is sample 'resolve' language to use as a starting point for a resolution that would be voted on by your local government)

RESOLVED, [That the Citizens/City Council/Legislature of _____] calls upon the United States Congress to pass and send to the states for ratification a constitutional amendment to reverse *Citizens United v. Federal Election Commission*; and to clarify that:

Corporations are not entitled to the Constitutional protections or "rights" of natural persons;

And/Or

"Money is not speech, and therefore regulating election-related spending is not equivalent to limiting political speech."

And

RESOLVED, that we instruct the [City/State representatives of _____] to make the need and support for a constitutional amendment known to our state's Congressional delegation, and to the Congress at large and to ask for their position on such an amendment.

Sample Resolve Language for a Referral Resolution

(This is sample 'resolve' language to use as a starting point for a resolution that would be voted your local government and that would put a similar question on the local ballot for voters to consider as well)

BE IT RESOLVED that the voters of [XCity/State] should have the opportunity on the November 2012 ballot to instruct [jurisdiction's] congressional representative[s] as direct agents of the people, to do everything within their delegated authority to propose; [and our state legislators to ratify]; an amendment to the United States Constitution that would overturn the decision of the United States Supreme Court in *Citizens United v. Federal Election Commission*.

That amendment should make clear that Corporations are not entitled to the Constitutional protections or "rights" of natural persons [and/or] that money is not speech, and therefore that regulating election-related spending is not equivalent to limiting political speech, and Congress and the States may place limits on election contributions and expenditures;

THEREFORE [this body] hereby refers the following question to be presented to [jurisdiction] voters on the November 2012 ballot:

Do you want to instruct [jurisdiction's] congressional representatives to propose, and [jurisdiction's] state legislators to ratify, an amendment to the United States Constitution to clarify that corporations are not entitled to the constitutional rights of natural people, and to allow limits on political campaign spending?

The [Secretary of State/local election official] shall tally the results. If a majority of voters support the question the [Secretary of State] shall send a written notice to [jurisdiction's congressional delegation] on the twenty-first of January of each year until Congress has proposed an amendment as provided for in Article V of the United States Constitution to address these issues informing them of the instructions from their constituents.

“Mix and Match” Whereas Clauses

We recommend picking and choosing from the following Whereas clauses.

Preamble clauses: Corporations are NOT People, and their political spending is not protected speech

WHEREAS, the protections afforded by the First Amendment to the United States Constitution to the people of our nation are fundamental to our democracy; and

WHEREAS, the First Amendment to the United States Constitution was designed to protect the free speech rights of individual human beings (“natural persons”), not corporations; and

WHEREAS, Corporations are not people but instead are artificial entities created by the law of states and nations; and

WHEREAS, corporations are not mentioned in the Constitution and The People have never recognized the extension of fundamental constitutional rights to corporations, nor have We decreed that corporations have authority that exceeds the authority of “We the People;” and

WHEREAS, for the past three decades, a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations and extremely wealthy individuals seeking to evade and invalidate democratically-enacted reforms; 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 wrongly held that money spent in elections is a form of speech that may not be restricted due to such compelling interests as ensuring a level playing field, and ensuring that all citizens—regardless of wealth—have an opportunity to have their political views heard; and

Critiques of the Supreme Court’s judicial activism and overturning of precedent

WHEREAS, corporate misuse of the First Amendment and the Constitution reached an extreme conclusion in the United States Supreme Court’s ruling in *Citizens United v. Federal Election Commission* (2010); and

WHEREAS, the Court’s ruling in *Citizens United v. FEC* overturned longstanding precedent prohibiting corporations from spending their general treasury funds in our elections; and

WHEREAS, the majority in *Citizens United v. FEC* ignored the case and controversy placed immediately before them and requested additional arguments even after the plaintiffs had argued their case on the basis of statutory interpretation and a more narrow as-applied constitutional challenge, instead choosing to reach out and make a sweeping constitutional ruling; and

WHEREAS, *Citizens United v. FEC* overturned the Court’s earlier decision in *Austin v Michigan Chamber of Commerce* (1990), which correctly 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

WHEREAS, *Citizens United v. FEC* also overturned aspects of the Court’s more recent decision in *McConnell v FEC* (2005), which by contrast had upheld the Bipartisan Campaign Reform Act of 2002 (BCRA), an act whose modest reforms were being challenged in *Citizens United*; and

Critiques of the Supreme Court’s illogical “findings”

WHEREAS, the majority in *Citizens United v FEC* held that only quid-pro-quo corruption or the appearance thereof can justify limits on independent expenditures in campaigns, rejecting the common sense that has guided over 100 years of state and federal efforts to prevent electoral spending from becoming a form of influence buying; and

WHEREAS, the majority in *Citizens United v FEC* wrote that “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption;” and

WHEREAS, the majority in *Citizens United v FEC* properly upheld the BCRA’s disclosure provisions, but erroneously presumed that disclosure of corporate expenditures to shareholders and to the public sufficiently exist and can alone sufficiently protect democracy from the purchasing of preferred access to elected officials; and

WHEREAS, *Citizens United v. FEC* erroneously equated the desire of large corporations to influence political decision-making through massive electoral expenditures with the speech of disadvantaged individuals and groups seeking to make their voices heard; and

WHEREAS, Justice John Paul Stevens’ opinion for the four dissenting justices in *Citizens United v. FEC* 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 that have little or no correlation with the beliefs held by natural persons; and

WHEREAS, the *Citizens United v FEC* dissenters observed that, “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;” and

WHEREAS, the *Citizens United v FEC* dissent correctly observed that money spent on behalf of candidates is a means of amplifying speech and not a form of political speech itself, and restrictions on corporate spending are more properly viewed as restrictions on the time, place and manner of speech; and

The direct impact of *Citizens United*: more corporate money and power, less democracy

WHEREAS, as a result of the decision in *Citizens United v. FEC*, the political spending of corporations and wealthy individuals receives a constitutional presumption of protected status, whereas the restrictions on the rights of individual citizens to protest the auctioning of our democracy are subject to a more deferential form of review; and

WHEREAS relying on *Citizens United v FEC* in *SpeechNow.org v. FEC* (2010), the DC Circuit Court of Appeals overturned limits on independent expenditures, paving the way for the so-called “Super PACs” that are at the heart of torrent of special-interest money looming over our local, state and federal elections; and

WHEREAS, *Citizens United v. FEC* has in fact unleashed a torrent of corporate money in our political process unmatched by any campaign expenditure totals in United States history; and

WHEREAS, based on data gathered by OpenSecrets.org, a respected non-partisan website that tracks money in American politics, spending by non-party committees during the 2010 Congressional elections (the first federal elections to occur after *Citizens United*) increased to approximately \$304.7 million, four times the level of such spending in 2006; and

WHEREAS, contrary to the *Citizens United* majority’s assumption that disclosure would allow for public accountability, half of the drastically increased spending during the 2010 elections was by secretive political committees not required to disclose their donors; and

WHEREAS, spending in the 2012 elections is project to total at least \$8 billion, and spending by “Super PACs” has played a dominant and deleterious role in shaping the presidential election thus far; and

WHEREAS, *Citizens United v. FEC* purports to invalidate state laws and even state Constitutional provisions separating corporate money from elections, many of them over 100 years old; and

WHEREAS, the opinion of the Montana Supreme Court in *Western Tradition Partnership v Attorney General* (2011) and Justice Nelson's reluctant dissent in that case demonstrate the long-standing, continued compelling interest in preventing corruption and lack of faith in democratic decision-making that motivates reasonable restrictions on corporate campaign spending; AND

WHEREAS, the plaintiff seeking to invalidate Montana's century-old ban on corporate electoral spending in *Western Tradition Partnership*, an out-of-state organization opposed to environmental regulations, deliberately boasted of its desire and ability to influence policy through secretive and unaccountable means, telling donors that, "no politician, no bureaucrat, and no radical environmentalist will ever know you helped make this program possible;" AND

Whereas, the United States Supreme Court's ruling in *Citizens United v. FEC* represents a serious and direct threat to our democracy; and

Historical findings and quotes

WHEREAS, The general public and political leaders in the United States have recognized, since the founding of our country, that the interests of corporations do not always correspond with the public interest and that, therefore, the political influence of corporations should be limited; and

WHEREAS, In 1816, former President Thomas Jefferson wrote, "I hope we shall crush in its birth the aristocracy of our moneyed corporations, which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country"; and

WHEREAS, In his 1910 "New Nationalism" speech, former President Theodore Roosevelt stated that, "It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes; it is still more necessary that such laws should be thoroughly enforced. Corporate expenditures for political purposes...have supplied one of the principal sources of corruption in our political affairs."

WHEREAS, in his dissenting opinion in *Citizens United v FEC*, Justice John Paul Stevens observed that "At bottom, the 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 distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt....While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics."

Conclusion and "Resolved" Clauses

WHEREAS, Article V of the United States Constitution empowers and obligates the people and states of the United States of America to use the constitutional amendment process to correct those egregiously wrong decisions of the United States Supreme Court that go to the heart of our democracy and republican self-government; and

WHEREAS, Notwithstanding the decision in *Citizens United v. FEC*, legislators have a duty to protect democracy and guard against the potentially detrimental effects of corporate spending in local, state, and federal elections;