



August 1, 2011

Dear Members of Boulder City Council,

We applaud your serious consideration of a ballot measure that would allow Boulder voters the opportunity to express support for a constitutional amendment that would establish that unlimited campaign spending is not equivalent to free speech and that the constitution was never intended to extend extra rights to corporations above and beyond the rights held by their individual shareholders and members.

While Colorado Common Cause supports the language introduced by Councilor Cowles that gives voters a chance to “urge” Congress to propose a constitutional amendment, we would encourage you to adopt a practice known as voter instructions that was used by voters to bring about passage of the 17th Amendment for direct election of senators. The tradition of constituent instructions dates back prior to the Revolutionary War. For example, colonists sent delegates to the Continental Congress on a number of matters, even with explicit instructions to support the Declaration of Independence. The practice continued under the Articles of Confederation during the Philadelphia Constitutional Convention of 1787.

While constituent instructions have never been considered legally binding, they have historically carried great force. Some of our Founding Fathers, including John Quincy Adams, resigned their offices rather than disobey instructions from their constituents.

Voter Instructions Language

A minor modification of Councilor Cowles’s proposal would embrace this long tradition of voter instructions if it read:

Shall the City of Boulder adopt the following resolution: RESOLVED, the City of Boulder, Colorado instructs our state and federal legislators to propose and ratify a specific amendment to reclaim democracy from the corrupting effects of undue corporate influence by amending the United States Constitution to establish that:

1. Only human beings, not corporations, are entitled to constitutional rights, and
2. Money is not speech, and therefore regulating political contributions and spending is not equivalent to limiting political speech."

Corporations do not have inalienable rights of life, liberty, and pursuit of happiness

Our Constitution recognizes certain rights of all human beings – the right to form a corporation is not among them. Rather, We the People have concluded that we want to encourage people to form economic associations above and beyond what they might do naturally. In order to encourage that, our governments have created corporations that have even greater privileges than we do as individuals such as the right of limited liability.

As conservative Chief Justice John Marshall said in the case *Dartmouth College v Woodward* (1819) “A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of creation confers upon it....”

Money is not speech

We agree with Justice John Paul Stevens that “money is property, it is not speech.” While money can indeed be used to disseminate speech, a system which bases the ability to be heard upon one's economic wealth ensures that speech will only be available to a wealthy few.

Expressing Boulder's Values does not risk Unintended Consequences

We appreciate that as elected officials, councilors want to give great thought prior to making changes to our cherished Constitution. This is a topic which deserves our country's thorough consideration. This is why we are not urging you to support a specific amendment to the Constitution; rather you are giving voters a chance to formally instruct state and federal legislators to begin a very thorough and deliberative process by which amendment language could be finalized.

Moreover, we suggest you keep three important factors in mind:

- 1) The Constitution existed for more than a century before the Supreme Court changed it to include constitutional rights for corporations beginning in 1886. It is not an unknown world that we seek to return to, but rather a time tested one that existed in our country.
- 2) The Constitution existed for nearly 200 years before the Supreme Court changed it to declare that unlimited campaign spending deserved protection as free speech. Many states had mandatory limits on campaign expenditures prior to the 1976 *Buckley v. Valeo* ruling and democracy flourished.
- 3) An amendment to restore the Constitution to its previous state before the courts altered it would not remove any of the existing protections that individuals have in the Constitution. Indeed, in the 1958 *NAACP v. Alabama* ruling, the Supreme Court found that “immunity from state scrutiny of petitioner's membership lists is here so related to the **right of petitioner's members** to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment” (emphasis added). The constitutional rights of individuals involved with non-profit corporations such as Planned Parenthood, the NAACP, churches, or other political entities would not be impacted by this amendment.

We have attached a Frequently Asked Questions page that addresses in more detail some of the issues that have been raised around non-profit corporations.

Local Legislative Branches are Crucial to Restoring our Constitution

As far back as 1912, Teddy Roosevelt noted that the courts had “grown to occupy a position unknown in any other country, a position of superiority over both the legislature and the executive.” Worse, “privilege has entrenched itself in many courts just as it formerly entrenched itself in many legislative bodies and in many executive offices.”

The five members of the current Supreme Court who reversed the Court's own precedent in the *Citizens United* ruling have abandoned any pretense of judicial modesty and are instead acting like an un-elected legislature by making rules of their own belief rather than simply interpreting the Constitution. Our system of checks and balances demands a response from the legislative branch.

As unlimited corporate spending holds more and more influence over our federal elections, we will find less leadership among federal legislators willing to change the system that elected them. This is the same dilemma that reformers faced when working to give women the right to vote and to create direct election of U.S. Senators.

As we did then, citizens must use state and local leadership to overcome the self-interest of entrenched federal incumbents. This is why local resolutions such as what you are now considering, are not only appropriate but indeed indispensable toward upholding the Constitution and the potential for a representative republic in America.

Thank you for your consideration,

Elena Nunez
Program Director, Colorado Common Cause
enunez@commoncause.org
(303) 292-2163 office
(720) 339-3273 cell