



CITY OF KIRKLAND
City Manager's Office
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www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Lorrie McKay, Intergovernmental Relations Manager

Date: August 29, 2016

Subject: RESOLUTION SUPPORTING INITIATIVE MEASURE NO. 735, CONCERNING A PROPOSED AMENDMENT TO THE FEDERAL CONSTITUTION

RECOMMENDATION:

City Council hold a public hearing and consider the attached Resolution expressing support of Initiative Measure No. 735, which concerns a proposed amendment to the federal constitution (Attachment A), which will be on the general election ballot in November 2016.

BACKGROUND:

According to the Secretary of State, Initiative to the Legislature 735 was designed to overturn the 2010 U.S. Supreme Court Citizens United decision by ensuring that constitutional rights apply only to individuals and not corporations.

Proponents of I-735 gathered 330,000 signatures before the 2016 Legislature met, enough to put the measure on the November 2016 ballot because lawmakers chose not to act on the proposal during the 2016 legislative session. If voters approve it, Washington State will join 18 other states in passing a resolution against Citizens United.

The certified ballot title for Initiative Measure No. 735 reads as follows:

Initiative Measure No. 735 concerns a proposed amendment to the federal constitution.

This measure would urge the Washington state congressional delegation to propose a federal constitutional amendment that constitutional rights belong only to individuals, not corporations, and constitutionally-protected free speech excludes the spending of money.

Should this measure be enacted into law?

Yes

No

The ballot summary is as follows:

The measure would urge the Washington state congressional delegation to propose a federal constitutional amendment clarifying that constitutional rights belong only to individuals, not corporations; that spending money is not free speech under the First Amendment; that governments are fully empowered to regulate political contributions and expenditures to prevent undue influence; and that political contributions and expenditures must be promptly disclosed to the public. The measure would urge the legislature to ratify such an amendment.

[Explanatory Statement on the Secretary of State's Elections Division web site](#)

The Law as it Presently Exists

The United States Supreme Court has held that the First Amendment to the United States Constitution protects the right of individuals to contribute money to candidates running for office and to spend money independently to support or oppose candidates. In 2010, the Court held in a case called *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), that the First Amendment also gives corporations a right to independently spend money to support or oppose candidates.

An amendment changing the United States Constitution may be proposed either by the United States Congress or by a constitutional convention called for by two-thirds of the States' legislatures. A proposed amendment becomes a part of the Constitution if it is ratified by three-fourths of the States. The amendment process is described in Article V of the United States Constitution.

The Effect of the Proposed Measure, if Approved

The measure would urge Washington's current and future members of Congress to propose a joint resolution to amend the United States Constitution. The proposed amendment would state that constitutional rights belong only to individual human beings; that spending money is not free speech under the First Amendment; that governments are fully empowered to regulate political contributions and expenditures to prevent undue influence on government; and that political contributions and expenditures must be promptly disclosed to the public.

The measure would urge Washington's members of Congress to choose an amendment ratification method that will best ensure that the people are heard and represented during the ratification process. It would also urge current and future Washington legislatures to ratify such an amendment when passed by the United States Congress and delivered to the States for ratification.

Finally, the measure would provide that immediately after the measure is enacted, the Washington Secretary of State is directed to deliver copies of the measure to the Washington State Governor, all current members of the Washington State Legislature, all current members of the United States Congress, and the President of the United States.

Fiscal Impact Statement for Initiative 735

Initiative 735 would have no significant fiscal impact on state or local governments. The initiative requires the Secretary of State to immediately deliver copies of the initiative when enacted to listed elected officials, which would cost approximately \$325.

Assumptions for Analysis of Initiative 735

The initiative is a request to Washington's current and future congressional delegation to propose a joint resolution for an amendment to the U.S. Constitution clarifying five items:

1. Constitutional rights are rights only to human beings.
2. The judiciary may not equate spending money with freedom of speech.
3. All political contributions and expenditures must be disclosed prior to elections.
4. Governments may regulate political contributions and expenditures to prevent undue influence.
5. This act does not limit the people's rights under the First Amendment of the U.S. Constitution.

When enacted, the Secretary of State is directed to immediately deliver copies of the initiative to the governor, all current member of the state Legislature, all current members of the U.S. Congress and the president of the United States, which totals approximately 684 people. Assuming the initiative is delivered by first class postage at \$.47 per piece of mail, the cost to fulfill this provision is estimated at \$325.

OUTREACH TO CAMPAIGNS "FOR" AND "AGAINST":

The Secretary of State's general election voters' guide includes arguments "For" and "Against" Initiative Measure No. 735 (Attachment B).

Staff reached out to representatives of the Vote Yes I- 735 Campaign and to representatives of the No on I-735 Campaign, in an effort to gather information from both perspectives, and to invite representatives to the September 6 public hearing.

www.wamend.org/ is the web site for Vote Yes I-735. This web site provides information about the initiative (Attachment C).

www.firstamendmentdefenders.weebly.com/ is the web site for No on I-735. This web site provides information about the initiative (Attachment D).

COUNCIL ACTION:

Under RCW 42.17A.555, the Council may vote on a resolution to support or oppose a ballot proposition "so long as

- (a) any required notice of the meeting includes the title and number of the ballot proposition, and
- (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of any opposing view;..."

Following the public hearing, Council may: approve or reject the proposed resolution; modify the resolution; ask staff to provide additional information for action at a later date; or take no action on the resolution.

- Attachments:
- A. Full text of Initiative Measure No. 735
 - B. Voter Pamphlet Arguments (For and Against)
 - C. Yes on I-735 Information (from campaign website)
 - D. No on I-735 Information (from campaign website)

Initiative Measure No. 735

filed March 25, 2015

An Act Relating to the influence of corporations and money in our political system; and creating new section.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

New Section. **Sec. 1.** INTENT

This act declares that the people of Washington State support amending The Constitution of the United States to eliminate the undue influence of concentrated money and political power on elections and governmental policy. The amendment would overturn decisions by the Supreme Court of the United States extending constitutional rights to corporations and other artificial legal entities as well as those decisions equating the spending of money with free speech. It also provides for the regulation and disclosure of political contributions and spending.

New Section. **Sec. 2.** FINDINGS

1. Free and fair elections, as well as honest representation, are essential to self-determination and self-governance as described in The Declaration of Independence and established in The Constitution of the United States.
2. The American people have lost faith in the political process because their voices are not heard and their interests are not represented. Thus, an ever smaller percentage of Americans is motivated to vote.
3. The U.S. Constitution makes no mention of corporations or other artificial entities; there are no provisions extending rights to such entities. However, through a series of decisions equating a "corporation" with a "person," the U.S. Supreme Court extended to corporations the constitutional rights and protections intended for people only.
4. Unlike human beings, corporations can exist in perpetuity and in many countries at the same time. As a result many large corporations, both foreign and domestic, invest in campaigns to invalidate or bypass regulatory law intended to protect the public. Thus, corporate participation in the political process often conflicts with the public interest.
5. Money is property; it is not speech. Nowhere in the U.S. Constitution is money equated with speech. Because advertising is limited and costly, equating the spending of money with free speech gives those with the most money the most speech.
6. Whenever special interests, including very wealthy individuals, are able to spend unlimited amounts of money on political speech, candidates and officeholders can be corrupted and intimidated, and the free speech of most citizens is drowned out and denied. Monopolizing public speech neither promotes nor protects free speech.
7. Anonymous contributions and spending for political gain promote dishonesty and corruption, preventing voters from assessing the motives of the speaker. The public must be able to hold funders of political speech accountable when their messages prove false or misleading. Full and prompt disclosure of funding sources is essential to an informed electorate, fair elections, and effective governance.
8. Article V of the U.S. Constitution empowers the people and the states to use the amendment process to correct egregious decisions by the U.S. Supreme Court that subvert our representative government.

New Section. **Sec. 3. POLICY & PROMOTION**

The voters of the State of Washington urge immediate action by the current and future Washington State congressional delegations to propose a joint resolution for an amendment to The Constitution of the United States clarifying that:

1. The rights listed and acknowledged in The Constitution of the United States are the rights of individual human beings only.
2. The judiciary shall not construe the spending of money to be free speech under the First Amendment of The Constitution of the United States. Federal, state, and local governments shall be fully empowered to regulate political contributions and expenditures to ensure that no person or artificial legal entity gains undue influence over government and the political process.
3. All political contributions and expenditures shall be disclosed promptly and in a manner accessible to voters prior to elections.
4. This act does not limit the people's rights to freedom of speech, freedom of the press, free exercise of religion, or freedom of association.

New Section. **Sec. 4. RECOMMENDATION TO CONGRESS**

In accordance with the U.S. Constitution, the voters of the State of Washington urge the Washington state congressional delegation, and the U.S. Congress generally, to include an amendment ratification method which will best ensure that the people are heard and represented during the ratification process.

New Section. **Sec. 5. RECOMMENDATION TO STATE LEGISLATURE**

The voters of the State of Washington urge our current and future Washington state legislatures to ratify such an amendment when passed by Congress and delivered to the states for ratification.

New Section. **Sec. 6. DIRECTION TO SECRETARY OF STATE**

The Washington Secretary of State is authorized and directed to immediately deliver copies of this initiative, when enacted, to the following persons: the governor of the State of Washington, all current members of the Washington State legislature, all current members of the United States Congress, and the president of the United States.

New Section. **Sec. 7. CONSTRUCTION.**

The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

New Section. **Sec. 8. SEVERABILITY.**

If any provision of this act or its application to any person, entity, or circumstance is held invalid, the remainder of the act or the application of the provision to other persons, artificial legal entities, or circumstances is not affected.

New Section. **Sec. 9. MISCELLANEOUS.**

This act is known and may be cited as the "Government of, by, and for the People Act."

Washington Secretary of State, Elections Division

November 8, 2016 General Election

State Measures

[Initiative Measure No. 735, Concerns a proposed amendment to the federal constitution](#)

Argument For	Argument Against
<p>Big Money is Corrupting Our Political System</p> <p>The 2010 Supreme Court decision in Citizens United v. FEC and other cases have unleashed unlimited, anonymous campaign dollars from mega-wealthy individuals, corporations, unions, and other special interests. SuperPACs and interest groups spent more than \$1 billion on campaigns in 2012 – almost 3 times more than 2008! This year will be even worse.</p> <p>Instead of representing the people who elected them, many politicians spend their time courting big donors who expect favors in return. Where does that leave the voice and concerns of the average citizen?</p> <p>Congress Will Only Act If We Demand It</p> <p>Although 80% of Republicans and 83% of Democrats support overturning Citizens United, Congress will not act on its own -- politicians profit from business as usual. But when we voters put our voices on record, we hold Congress accountable for inaction. Sixteen states and over 650 municipalities have already passed measures like ours. By adding Washington to the list, we will tell our elected representatives that we want change now.</p> <p>A New Constitutional Amendment</p> <p>Initiative 735 calls on Congress to initiate a Constitutional amendment overturning Citizens United and stipulating that spending money is not protected political speech. The amendment would ensure that contributions are regulated and publicly disclosed. It would also clarify that only people have Constitutional rights -- not corporations or special interest groups.</p> <p>This is about restoring the power of "We the People." Let's send a clear message to the other Washington. Vote "yes" on Initiative 735!</p>	<p>Initiative 735 is a dangerous proposal to allow government censorship. This would be the first Constitutional amendment since prohibition to take rights away.</p> <p>Silencing speech is undemocratic</p> <p>Citizens should have as much opportunity to share and receive information as possible. Silencing certain speakers is counterproductive. Forbidding citizens from spending their money spreading their beliefs is totalitarian, not democratic. We can, we must, find solutions that expand, instead of taking away, our rights. Vote no I-735.</p> <p>Initiative 735 opens Pandora's Box</p> <p>Initiative 735 allows censorship of both profit and nonprofit corporations. Government would be free to censor news, books, movies, music, and your favorite charity. If a corporation made it, government could censor it. Should we empower congressional Republicans to censor corporations including Planned Parenthood, Playboy, PETA and WashPIRG? Absolutely not. Should we empower congressional Democrats to censor CareNet, Fox News, National Organization for Marriage and the NRA? Absolutely not. Vote no I-735.</p> <p>We need more speech, not less</p> <p>To prohibit spending money on speech would severely hamper public discourse. The Founders wisely protected freedom of speech and press, even though the historic printing press cost money. The best protection for diverse speech is keeping centralized regulators like Congress from controlling the marketplace of ideas. Vote no I-735.</p> <p>We can require disclosures</p> <p>The Citizens United ruling allows government to require disclosure of political contributions. We can</p>

bolster disclosure requirements without amending the Constitution. Vote no I-735.

Rebuttal of Argument Against	Rebuttal of Argument For
<p>Initiative 735 will not limit freedom of speech or freedom of the press. It will keep moneyed special interests from having a louder voice than "We the People." We support Initiative 735 because we believe in freedom of speech for everyone, not just Super PACs, corporations, and wealthy individuals who monopolize the media with attack ads and misinformation. Spending unlimited, secret campaign money is legalized bribery. If you cherish free speech, vote "Yes" on 735!</p>	<p>"Amendment I. Congress shall make no law abridging the freedom of speech, or of the press....." I-735 seeks to destroy freedom of speech by amending the Constitution. I-735 seeks to censor corporations such as the Seattle Times, the Tacoma News Tribune, the Spokane Spokesman-Review, Disney/ABC, Comcast/NBC, Time Warner/CNN, CBS, the New York Times, Planned Parenthood, the Sierra Club, Facebook, Twitter, Google and the Corporation for Public Broadcasting. Vote No on I-735.</p>

Argument Prepared By	Argument Prepared By
<p>Cindy Black, Coordinator, Washington Coalition to Amend the Constitution (WAmend); Alice Woldt, Executive Director, Fix Democracy First; Ben Stuckart, President, Spokane City Council; Jim Street, Former Superior Court Judge; Lyda Pierce, Rev. Dr. Latino/Hispanic Ministries United Methodist Church; Pramila Jayapal, State Senator 37th District, founder One America</p> <p>Contact: (206) 547-9961 info@wamend.org; WAmend.org</p>	<p>Rebecca Faust, First Amendment defender; Kelly Houghton, First Amendment defender</p> <p>Contact: www.firstamendmentdefenders.weebly.com; firstamendmentdefenders@protonmail.com</p>



Frequently Asked Questions A New Constitutional Amendment

What will it take to overturn Citizen United and related Supreme Court decisions?

There are only three ways a Supreme Court ruling can be overturned. First, the Supreme Court could do so itself via a new case. Or Congress, pushed by the people, can pass a Constitutional amendment with a 2/3 majority in each house and then ratification from by 3/4 of the states' legislatures. The last way involved a Constitutional Convention called for by 38 states' legislatures that would then be voted on by randomly selected constituents serving.

What would the constitutional amendment do?

The Amendment would overturn Supreme Court decisions extending to corporations the same Constitutional rights as living, breathing people and empower federal, state and local governments to regulate and require disclosure of political contributions and expenditures to ensure that no person or artificial legal entity gains undue influence over government and the political process

Is a Constitutional amendment the appropriate response?

Yes. We have amended the Constitution 27 times. Seven of those amendments overturned Supreme Court decisions.

Will the proposed Amendment limit free speech?

The amendment would not limit the content of speech in any way. It would limit the amount of money that can be spent by individuals, corporations and other entities to dominate political discourse that drowns out the speech of most citizens and corrupts the political process.

Does the proposed amendment limit freedom of the press?

The First Amendment treats freedom of speech and freedom of the press separately. The amendment would not limit freedom of the press in any way.

Will the proposed amendment prevent people from joining together into political parties, citizens' organizations, associations or other groups?

The proposed amendment would not change constitutionally protected freedom of association. People will continue to be free to associate with others to engage in political activity. However, the amount of money that such organizations contribute to political campaigns could be regulated.

Corporate Personhood

Why does the WAmend Initiative include all corporate rights?

Corporations are not mentioned in the Constitution; consequently, they have no rights in the Constitution. However, over the years and through numerous court cases, corporations have successfully claimed constitutional rights when the rights and responsibilities they actually have are those mandated by statute in the charters they are granted by the states, not by the Constitution. The WAmend ballot initiative has no intention of hindering corporations' abilities to operate and do business in accordance with their established charters.

Limiting the language of our initiative to First Amendment Free Speech rights would be tantamount to supporting corporate claims that they do have other rights under the Constitution, which they do not. That is why we are calling for a constitutional amendment that clarifies that *all* rights under the Constitution are the rights of human beings only.

What Constitutional Rights have corporations successfully claimed?

- 1st Amendment Free Speech rights. Corporations use these rights, meant to protect human beings from the power of the state, to influence elections through political “contributions” (more like “investments”); to advertise for guns, tobacco and other dangerous products over the objections of communities; to avoid having to label genetically modified foods.
- 4th Amendment Search and Seizure rights. Corporations have used these rights to avoid subpoenas for unlawful trade and price fixing and to prevent citizens, communities and regulatory agencies from stopping corporate pollution and other assaults on people or the commons (e.g., prohibiting regulators from making surprise inspections).
- 5th Amendment Takings, Double Jeopardy and Due Process rights. Corporations use these rights to be compensated for property value lost (e.g., future profits) when regulations are established to protect homeowners or communities; to ensure they cannot be retried after a judgment of acquittal in court; to ensure that the granting of property to a corporation by a public official cannot be unilaterally revoked by a subsequent public official or Act of Congress.
- 7th Amendment Right to Trial by Jury. This amendment codifies the right to a jury trial in certain civil cases, and inhibits courts from overturning a jury's findings of fact. In *Ross v. Bernhard*, corporations get 7th Amendment right to jury trial in a civil case. The Court implies that the corporation has this right because a shareholder in a derivative suit would have that right.

- 14th Amendment Due Process and Equal Protection corporate rights. Corporations have used these rights to build chain stores and erect cell towers against the will of communities; oppose tax and other public policies favoring local businesses over multinational corporations; resist democratic efforts to prevent corporate mergers and revoke corporate charters through citizen initiatives. 14th Amendment rights, originally enacted to free slaves from oppression, were seen by corporations as a grand opportunity to also get equal protection. Between 1890 and 1910, more than 300 Supreme Court cases were heard under the 14th Amendment: 288 by corporations and only 19 by African Americans.
- Commerce Clause-related rights. Corporations have used this section of the Constitution (Article 1, Section 8), for example, to ship toxic waste from one state to another over the “health, safety and welfare” objections of communities by claiming the waste isn’t actually “waste” but “commerce.”
- Contracts Clause-related rights. The Supreme Court ruled in *Dartmouth vs. Woodward* (1819) that a corporation is as a party in a private contract based on the Contracts Clause (Art 1, Sec 10) rather than being a creature of public law. Even though the state creates a corporation when it issues a charter, that state is not sovereign over the charter, merely a party to the contract. Thus, corporations became “private contracts” with the state and, therefore, shielded from many forms of control by We the People.

Keep the First Amendment

VOTE NO INITIATIVE 735

Why Vote No?

Initiative 735 is a dangerous proposal to allow government censorship. This would be the first Constitutional amendment since prohibition to take rights away.

Silencing speech is undemocratic

Citizens should have as much opportunity to share and receive information as possible. Silencing certain speakers is counterproductive. Forbidding citizens from spending their money spreading their beliefs is totalitarian, not democratic. We can, we must, find solutions that expand, instead of taking away, our rights. Vote no I-735.

Initiative 735 opens Pandora's Box

Initiative 735 allows censorship of both profit and nonprofit corporations. Government would be free to censor news, books, movies, music, and your favorite charity. If a corporation made it, government could censor it. Should we empower congressional Republicans to censor corporations including Planned Parenthood, Playboy, PETA and WashPIRG? Absolutely not. Should we empower congressional Democrats to censor CareNet, Fox News, National Organization for Marriage and the NRA? Absolutely not. Vote no I-735.

We need more speech, not less

To prohibit spending money on speech would severely hamper public discourse. The Founders wisely protected freedom of speech and press, even though the historic printing press cost money. The best protection for diverse speech is keeping centralized regulators like Congress from controlling the marketplace of ideas. Vote no I-735.

We can require disclosures

The Citizens United ruling allows government to require disclosure of political contributions. We can bolster disclosure requirements without amending the Constitution. Vote no I-735.

RESOLUTION R-5205

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND SUPPORTING INITIATIVE MEASURE NO. 735, CONCERNING A PROPOSED AMENDMENT TO THE FEDERAL CONSTITUTION.

1 WHEREAS, the spending of money by individuals in elections has
2 been construed by the U.S. Supreme Court to be protected free speech
3 under the First Amendment of the Constitution of the United States and
4 those protections have been extended to corporations and other legal
5 entities as well; and
6

7 WHEREAS, previous U.S. Supreme Court decisions have eroded
8 the authority of government to regulate campaign contributions and
9 expenditures; and
10

11 WHEREAS, the prompt disclosure of all political contributions and
12 expenditures in a manner accessible to voters prior to elections is in the
13 best interest of holding free and fair elections; and
14

15 WHEREAS, Initiative 735 seeks to make Washington the 18th
16 state calling for a U.S. constitutional amendment to overturn such
17 decisions; and
18

19 WHEREAS, as allowed by RCW 42.17A.555, the City Council of
20 Kirkland desires to show its support to Initiative 735.
21

22 NOW, THEREFORE, be it resolved by the City Council of the City
23 of Kirkland as follows:
24

25 Section 1. The City Council supports Initiative 735, concerning
26 a proposed amendment to the Federal Constitution.
27

28 Section 2. The City Council urges Kirkland voters to vote yes on
29 Initiative 735.
30

31 Passed by majority vote of the Kirkland City Council in open
32 meeting this ___ day of _____, 2016.
33

34 Signed in authentication thereof this ___ day of _____, 2016.

MAYOR

Attest:

City Clerk