

Agenda Report

September 30, 2013

TO: Honorable Mayor and City Council
THROUGH: Legislative Policy Committee (July 24, 2013)
FROM: Assistant City Manager
SUBJECT: CITIZENS UNITED V. FEC SUPREME COURT RULING

RECOMMENDATION:

It is recommended that the City Council adopt a resolution of the City Council of the City of Pasadena supporting a constitutional amendment revising the Citizens Ruling.

RECOMMENDATION BY THE LEGISLATIVE POLICY COMMITTEE:

On July 23, 2013 the Legislative Policy Committee had a discussion on the Citizens United v. the Federal Election Commission Supreme Court ruling in 2010 and the impact it now presents on campaign contributions in elections. Following the discussion it was moved to direct staff to develop a resolution supporting a Constitutional amendment reversing the Citizens United Ruling, and forward the item to the City Council for consideration.

BACKGROUND:

At the regular meeting of the Legislative Policy Committee, community members the group Occupy Democracy Pasadena made a presentation on why the City of Pasadena should support a position to amend the Constitution to revise the impacts of Citizens United versus Federal Election Commission (FEC). Attachment 1 includes the information distributed at that meeting. Based on the information and testimony provided by the group, it was decided to move forward to the full City Council a resolution on this matter.

In 2010 the Supreme Court hear the case Citizens United v. Federal Election Commission in which the Court held that the First Amendment prohibited the government from restricting independent political expenditures by unions and corporations. The case was brought forward by a nonprofit group Citizens United who

wanted to air *Hillary: The Movie* and advertise the film during television broadcasts within 30 days of the 2008 Democratic primaries. The FEC maintain that airing the advertisement within 30 days of a primary was a violation of the 2002 Bipartisan Campaign Reform Act (BCRA). However, in a 5-4 decision, the Supreme Court held that portions of the BCRA violated the First Amendment.

The Supreme Court then went one step further and removed the ban on corporations and organizations using their treasury funds for direct advocacy. The ruling allowed corporations and unions to use their general treasuries to pay for political advertisements that expressly call for the election or defeat of a candidate, also known as independent expenditures. This ruling subsequently allowed non-profit corporations under the tax code 501c to spend unlimited amounts of money running these political advertisements while not revealing their donors.

In looking at the aftermath of the ruling, the nonprofit research group Center for Responsive Politics did a study in 2011 on the effects and noted the following:

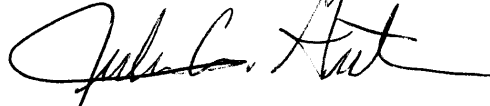
- The percentage of spending coming from groups that do not disclose their donors has risen from 1 percent to 47 percent since the 2006 midterm elections
- 501c non-profit spending increased from zero percent of total spending by outside groups in 2006 to 42 percent in 2010.
- Outside interest groups spent more on election season political advertising than party committees for the first time in at least two decades, besting party committees by about \$105 million.
- The amount of independent expenditure and electioneering communication spending by outside groups has quadrupled since 2006.
- Seventy-two percent of political advertising spending by outside groups in 2010 came from sources that were prohibited from spending money in 2006

As this relates to congressional activity, there are several measures that have been introduced since the Supreme Court decision that would serve to overturn it. This includes a resolution proposing a constitutional amendment by Representative Schiff H.J. 31. However, there has been no activity on any of these measures to date.

FISCAL IMPACT:

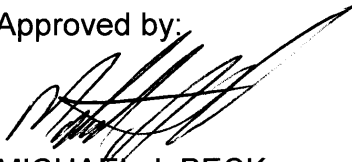
Support of this resolution will not have any fiscal impact to the City.

Respectfully submitted,



JULIE A. GUTIERREZ
Assistant City Manager

Approved by:



MICHAEL J. BECK
City Manager

RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA SUPPORTING A
CONSTITUTIONAL AMENDMENT REVISING THE CITIZENS UNITED RULING

WHEREAS, the U.S. Supreme Court's 2010 ruling in Citizens United v. Federal Election Commission eliminated all spending limits for corporations, unions, political action committees and individuals in political campaigns;

WHEREAS, the Citizens United decision rolled back legal restriction on corporate spending in the electoral process, allowing unlimited corporate spending to influence elections, candidate selection, and policy decisions, thereby threatening the voices of "We the People";

WHEREAS, the Citizens United ruling has allowed corporations, unions, political action committees and individuals to circumvent federal, state, and city laws pertaining to campaign finance and to spend whatever amount of money they wish on federal, state, and local elections;

WHEREAS, the United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings ("real people");

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

WHEREAS, the citizens of the City of Pasadena deserve to have full local control of our own election;

NOW, THEREFORE, BE IT RESOLVED, that the City of Pasadena urges the Congress to propose and support, and the state legislature to ratify, a Constitutional amendment to reverse the Citizens United ruling and enable the people, through their elected representatives, to regulate campaign contributions and expenditures in all elections at the federal, state and local levels and ensure that corporations are not entitled to the entirety of protections or "rights" of human beings, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech;

Adopted by the following vote at the meeting of the City Council on September 30, 2013

AYES:


NOES:

ABSTAIN:

ABSENT:

Mark Jomsky, City Clerk


Approved as to Form:


Michele Beal Bagners, City Attorney



OFFICE OF THE CITY MANAGER

July 24, 2013

TO: Legislative Policy Committee
FROM: Julie A. Gutierrez, Assistant City Manager 
SUBJECT: Citizens United v. FEC Supreme Court ruling

At the May 22nd meeting of the Legislative Policy Committee, Maddie Gavel-Briggs, from Occupy Democracy Pasadena, spoke during Public Comment and requested that the Committee review the distributed documentation regarding Citizens United v. FEC Supreme Court ruling of 2010 and agendize the item for future discussion. The request was granted and has been placed on this month's agenda for discussion and any Committee direction.

Attached to this report are documents provided by Ms. Gavel-Briggs and they include:

- A. Sample city resolution
- B. The City of Los Angeles' Resolution
- C. *Overturing Citizens United v. FEC* overview
- D. Original letter given to the Legislative Policy Committee members on May 22nd
- E. *Citizens United Affects City Council Members* document submitted to Committee on May 22nd

Staff has done initial research on this item and identified a bill by Congressman Adam Schiff, H.R. RES. 31 that represents his reaction to the Supreme Court decision. This bill proposes to amend the Constitution of the United States relating to the authority of Congress and the States to regulate contributions and expenditures in political campaigns and to enact public financing systems for such campaigns. I have attached a copy of the bill as well as an article from Congressman Schiff on his constitutional amendment (Attachment F).

Sample Resolution for the city of Pasadena to support a Constitutional amendment reversing the Citizens United Ruling:

WHEREAS, the US Supreme Court's 2010 ruling in Citizens United v. Federal Election Commission has eliminated all spending limits for corporations, unions, political action committees and individuals in political campaigns; and

WHEREAS, the Citizens United ruling has allowed corporations, unions, political action committees and individuals to circumvent federal, state and city laws pertaining to campaign finance and to spend whatever amount of money they wish on federal, state, and local elections; and

WHEREAS, the citizens of our city deserve to have full local control of our own elections,

NOW, THEREFORE, BE IT RESOLVED that this city urges the Congress to propose and support, and the state legislature to ratify, a Constitutional amendment to reverse the Citizens United ruling and enable the people, through their elected representatives, to regulate campaign contributions and expenditures in all elections at the federal, state and local levels; and

BE IT FURTHER RESOLVED that this city council directs the city manager to forward copies of this resolution to our elected representatives in Congress and the state legislature.

MOTION

17A

WHEREAS, any official position of the City of Los Angeles with respect to Legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the U.S. Supreme Court's 5-4 ruling in Citizens United v. the Federal Election Commission rolled back legal restrictions on corporate spending in the electoral process, allowing unlimited corporate spending to influence elections, candidate selection, and policy decisions, thereby threatening the voices of "We the People" and the very foundation of our democracy; and

WHEREAS, U.S. 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 Citizens decision supersedes state and Local efforts to regulate corporate activity in their elections;

NOW THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Motion, the City of Los Angeles hereby includes in its 2011-2012 Federal and State Legislative Programs SUPPORT for Legislative actions ensuring corporations are not entitled to the entirety of protections or "rights" of human beings, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech, including a constitutional amendment based on the attached language.

PRESENTED BY:



ERIC GARCETTI
Councilmember, 13th District



BILL ROSENDAHL
Councilmember, 11th District

SECONDED BY:



PAUL KREKORIAN
Councilmember, 2nd District



ORIGINAL



DEC - 6 2011

Proposed Constitutional Amendment

Section 1 [*A corporation is not a person and can be regulated*]

The rights protected by the Constitution of the United States are the rights of natural persons only.

Artificial entities, such as corporations, limited liability companies, and other entities, established by the laws of any State, the United States, or any foreign state shall have no rights under this Constitution and are subject to regulation by the People, through Federal, State, or local law.

The 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.

Section 2 [*Money is not speech and can be regulated*]

Federal, State and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, for the purpose of influencing in any way the election of any candidate for public office or any ballot measure.

Federal, State and local government shall require that any permissible contributions and expenditures be publicly disclosed.

The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.

Section 3

Nothing contained in this amendment shall be construed to abridge the freedom of the press.

Overturing *Citizens United v. FEC*

The Decision

The Supreme Court of the United States, in the 2010 case of *Citizens United v. Federal Election Commission*, demanded that local, state, and federal governments allow for unlimited union spending and other corporate spending in elections. Immediately, Americans from all political backgrounds expressed outrage at the Court's disastrous decision. Today, when Americans are asked if government is too corrupt from the influence of money in politics, the answer is consistently a resounding yes.

The Reaction

National polls by prominent polling and news organizations show that substantial majorities of Americans are currently rejecting the decision. One survey shows that 79% of Americans (87 percent of Democrats, 82 percent of Independents, and 68 percent of Republicans) agree that "Restoring Congressional authority to limit the amount corporations can spend on elections might require a Constitutional amendment because the Supreme Court's decision in the Citizens' United case said corporations have the same rights as individuals under the Constitution. Those surveyed "would support a Constitutional amendment that would overturn the Citizens United decision."*

The huge influx of money into elections is very troublesome, and many Americans are deeply concerned about possible corruption. Over 500 cities have passed resolutions urging an amendment to overturn Citizens United. Sixteen states have also passed resolutions. The states of Montana and Colorado each passed a statewide ballot initiative calling for an amendment by majorities of about 75%.

Ramifications of the decision

Anyone, including corporations, unions, political action committees, and individuals, is now allowed to contribute or spend any amount of money on any election in the country.

- At the national level, this means presidential, senatorial, and house elections.
- At the state level, all statewide offices, legislative offices, and ballot initiatives are open to unlimited campaign funds.
- At the local level, all county boards of supervisors, city councils, school boards, water boards, etc., are now open to independent expenditures of any amount, at any time.

In any election, all local controls on campaign contributions and expenditures will only apply to those working directly within a campaign. Organizations or individuals wishing to operate on their own may do so without restrictions on independent spending.

Examples

- The 2012 congressional election in California's 35th district was between two Democrats, Joe Baca and Gloria Negrete McLeod. New York's Mayor Michael Bloomberg spent \$3 million independently on media ads against Joe Baca because of Baca's voting record on gun control. Bloomberg outspent both candidates combined. McLeod won the election.
- A real estate developer in the City of Fullerton, CA, spent \$300,000, independently, to recall three members of the city council supposedly because of their handling of a city police department scandal. The developer had a long-standing dispute with all three council members, all Republicans. All three were recalled from office.

Hurting Small Business

- 66% of small business owners feel that the Supreme Court's ruling has been bad for small business, compared to only 9% who felt that it has been good for small business.
- Why do small businesses feel this way? It's easy to see why – most political contributions given to SuperPACs and independent groups come from a very, very small pool of well-connected donors seeking special treatment. Small businesses do not get the benefits.
- Though small business owners are now 'free' to make these unlimited political contributions, when it comes to political spending, small business owners on Main Street can't compete with big banks on Wall Street.

When local decision makers look at the facts on the ground, it's clear that Americans across the political spectrum are concerned about the impacts of the *Citizens United* on our democracy and our American way of life, and have a big opportunity to reach out – across the aisle or across town – to work with others to undo this ruling.

The people, through their elected representatives, should be in control of their own elections at all jurisdictions, whether federal, state or local government.

* Hart Research Associates Survey (12/2011 – 1/2012)

Dear Mayor Bogaard,

As you know, Citizens United is a 2010 Supreme Court ruling which has resulted in an unprecedented amount of money being spent on national and state elections. Of the \$7 billion spent on the 2012 elections, \$2.1 billion came from outside political committees, such as PACs and Super PACs.

As a result of Citizens United, outside money can also affect elections on the local level. Consider that in April 2012 the Super PAC "Committee for Oklahoma City Momentum" spent \$400,000 on four candidates running for the Oklahoma City Council; three of these four candidates won their campaigns.

In 2012 the Super PAC Durham Partnership for Progress, funded by developer Tyler Morris, spent \$54,000 promoting four candidates in the County Commissioners' elections. All four candidates were supporters of a controversial 167-acre, mixed-use project proposed by Morris' company, Southern Durham Development. Two were elected.

Please find enclosed the first installment of an information pack regarding Citizens United. We hope to be sending you additional information in the near future.

If you have any questions, please contact the Occupy Democracy Pasadena Leadership team at (626) 296-1607.

Sincerely,

The Occupy Democracy - Pasadena Leadership Team

How could Citizens United effect City Council members?

In April 2012 the Super PAC "Committee for Oklahoma City Momentum" spent \$400,000 on four candidates running for the Oklahoma City Council, three of these four candidates won their campaigns.

In 2012 the Super PAC Durham Partnership for Progress, funded by developer Tyler Morris, spent \$54,000 promoting four candidates in the County Commissioners' elections. All four candidates were supporters of a controversial 167-acre, mixed-use project proposed by Morris' company, Southern Durham Development. Two were elected.

The Citizens United ruling paved the way for corporations and unions to directly spend unlimited amounts of money in an attempt to influence an election. This is a bipartisan issue, as unlimited amounts of outside money could be used to support or defeat both Republican and Democrat public servants.

This new paradigm has been described as Wall Street vs Main Street.

Every person running for election, from council members to Senators, could be effected by the spending of tens of thousands and often hundreds of thousands of dollars. It's possible that some Super PACs may view spending money on local elections as more cost-effective than presidential or senatorial elections.

Furthermore, a poll conducted by the Brennan Center for Justice found that "one in four Americans are less likely to vote this year due to fears that candidates cater to the interests of Super PAC donors over the public interest."

What is Citizens United?

Citizens United v. Federal Election Commission was a 2010 case heard before the Supreme Court in which the Court held that the First Amendment prohibited the government from restricting independent political expenditures by unions and corporations.

The case was brought forward by the nonprofit group Citizens United who wanted to air *Hillary: The Movie* (which was critical of Hillary Clinton) and advertise the film during television broadcasts within 30 days of the 2008 Democratic primaries. The FEC maintained that airing this advertisement within 30 days of a primary was a violation of the 2002 Bipartisan Campaign Reform Act.

In a 5-4 decision, the Supreme Court held that portions of the Bipartisan Campaign Reform Act violated the First Amendment.

The Court then went one step further, and removed the ban on corporations and organizations using their treasury funds for direct advocacy. Although the ruling didn't remove the ban on corporations and unions donating directly to political campaigns, it did allow these entities to attempt to sway an election by airing ads endorsing or opposing a specific candidate. The ruling refers obsolete existing laws in 24 states which limited outside expenditures in state elections.

The Supreme Court's majority opinion argued that the government had no place in determining whether large expenditures distorted an audience's perceptions and that there was not sufficient evidence that the ruling would result in the risk of corruption or the appearance of corruption. A view that is not shared with 84% of American adults, according to a poll by Bannon Communications Research.

Senator Russ Feingold, a lead sponsor of the Bipartisan Campaign Reform Act, stated "This decision was a terrible mistake. Presented with a relatively narrow legal issue, the Supreme Court chose to roll back laws that have limited the role of corporate money in federal elections since Teddy Roosevelt was president."

What are Super PACs?

Prior to 2010 a provision of the Federal Election Campaign Act held that PACs could not accept corporate or union contributions or accept individual contributions in excess of \$5000. Although Citizens United did not touch on that provision directly, two months later the U.S. Court of Appeals for the District of Columbia Circuit heard *Speechnow.org v. Federal Election Commission*. This ruling held that in light of Citizens United there could no longer be restrictions on the sources and size of contributions to an "independent expenditure-only committee" in support of or opposition to a candidate.

Other points to consider

- A corporation can live forever and exist in several cities and countries at once. A person can be in one place at a time and cannot live forever. [SEP]
- The Citizens United ruling states that money equals speech. The result of this is that people who have money can speak, and people who don't, can't. A huge corporation with billions of dollars of revenue can have more speech than a neighborhood corner store. [SEP]
- The word corporation does not occur in the Constitution. And for the first seventy-five years after the Revolution, corporations were only permitted to exist if they served the public good.
 - The Boston Tea Party was not just an act of rebellion against King George, but also a protest against the huge corporation East India Company. Many of the Constitution's framers carried with them a distrust of corporations. [SEP]
 - Early American corporations were extremely restricted. For instance they had to be chartered by a vote of the state legislature, they could only exist for a set number of years, and they couldn't own property that wasn't essential to fulfilling their chartered

purpose. Corporations were also prohibited from making political contributions, direct or indirect. [SEP]

On local and state levels there has been bipartisan support for a constitutional amendment to overturn Citizens United. 11 states and by one account over 500 cities and councils have passed resolutions calling on Congress to overturn Citizens United. In California roughly 40 city councils have passed resolutions regarding Citizens United or corporate personhood, and range from the Redlands City Council to San Diego City Council.

Further Reading

http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=1187:a-guide-to-the-current-rules-for-federal-elections&catid

<http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

http://www.nytimes.com/2010/01/22/us/politics/22donate.html?_r=0

[http://asbcouncil.org/sites/default/files/files/Business Case for Business for Democracy.pdf](http://asbcouncil.org/sites/default/files/files/Business_Case_for_Business_for_Democracy.pdf)

<http://www.brennancenter.org/press-release/poll-super-pacs-leave-americans-less-likely-vote>

<http://www.united4thepeople.org/local.html>

<http://www.demos.org/publication/10-ways-citizens-united-endangers-democracy>

IA

113TH CONGRESS
1ST SESSION

H. J. RES. 31

Proposing an amendment to the Constitution of the United States relating to the authority of Congress and the States to regulate contributions and expenditures in political campaigns and to enact public financing systems for such campaigns.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2013

Mr. SCHIFF (for himself, Mr. CAPUANO, Mr. CICILLINE, Mr. FARR, Mr. GARAMENDI, Mr. HIMES, Ms. LEE of California, Mr. MICHAUD, Mr. MORAN, Ms. NORTON, Mr. WELCH, Mr. VAN HOLLEN, Mr. RUPPERSBERGER, Ms. MCCOLLUM, and Mr. RANGEL) introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to the authority of Congress and the States to regulate contributions and expenditures in political campaigns and to enact public financing systems for such campaigns.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the fol-*
4 *lowing article is proposed as an amendment to the Con-*
5 *stitution of the United States, which shall be valid to all*
6 *intents and purposes as part of the Constitution when*

1 ratified by the legislatures of three-fourths of the several
2 States within seven years after the date of its submission
3 for ratification:

4 "ARTICLE —

5 "Nothing in this Constitution shall be construed to
6 forbid Congress or the States from imposing reasonable
7 content-neutral limitations on private campaign contribu-
8 tions or independent election expenditures, or from enact-
9 ing systems of public campaign financing, including those
10 designed to restrict the influence of private wealth by off-
11 setting campaign spending or independent expenditures
12 with increased public funding."

○

From
Congressman
Adam B. Schiff...



WASHINGTON UPDATE

Rep. Schiff Reintroduces Constitutional Amendment Permitting Regulation of Campaign Spending

Washington, DC – Rep. Adam Schiff ... re-introduced a constitutional amendment to overturn the Supreme Court's ill-considered opinion in Citizens United, and other Supreme Court precedent, which have made it impossible to regulate the billions in campaign spending unleashed over the last two decades. The amendment also overturns the Supreme Court decision Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, which struck down an Arizona law that allowed public financing of a candidate if their opponent exceeded certain spending limits.

"With the growth of Super PACs this past cycle, it's clear that now more than ever we need real campaign finance reform," said Rep. Schiff. "As a result of the Supreme Court's artificial distinction between contributions to a candidate and direct expenditures that have the same effect, Super PACs and anonymous donors are the norm rather than the exception. My amendment is simple – it would allow Congress to set reasonable limits, and allow states to set up public financing for candidates, if they choose to do so.

"I have always been loathe to amend the constitution, but the tragic line of decisions by the Supreme Court has severely threatened the

very health of our democracy. Something must be done, and we must overturn Citizens United."

Schiff drafted the legislation last year with Harvard Law Professor Laurence H. Tribe, and pushed to hold hearings on his amendment and others. He was joined today by Michael Capuano, David Cicilline, Sam Farr, John Garamendi, Jim Himes, Barbara Lee, Betty McCollum, Michael Michaud, Jerry Moran, Eleanor Holmes Norton, Charles Rangel, C.A. Dutch Ruppersberger, Chris Van Hollen, and Peter Welch.

The amendment provides simply: "Nothing in this Constitution shall be construed to forbid Congress or the States from imposing reasonable content-neutral limitations on private campaign contributions or independent election expenditures, or from enacting systems of public campaign financing, including those designed to restrict the influence of private wealth by offsetting campaign spending or independent expenditures with increased public funding."

Schiff is no stranger to campaign finance reform. Elected in 2000, after the most expensive race for the House in history at the time, he became a cosponsor of the bipartisan McCain-Feingold bipartisan campaign finance reform law on his first day in Congress. Citizens United helped overturn critical parts of that and other campaign finance laws.

Laurence H. Tribe is the Carl M. Loeb University Professor and Professor of Constitutional Law at Harvard Law School. Rep. Schiff served as one of his research assistants while a student at the law school in the mid-1980s.

