

OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND



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Date: October 3, 2016

To: City Council

From: Councilmember At-Large Rebecca Kaplan and Councilmember Dan Kalb

Re: Resolution In Support Of Proposition 59, To Overturn The Citizens United Act Advisory Question.

Dear Colleagues on the City Council and Members of the Public,

With our introduction of a Resolution in Support of Proposition 59, we are submitting the attached: the official argument in favor, the analysis by the state legislative analyst, the full text of the proposition, and the City of Oakland's Resolution No. 83662.

We urge you to support this Resolution, which will be heard at the City Council Meeting on October 18, 2016.

Respectfully submitted,

Handwritten signature of Rebecca Kaplan in cursive.

Councilmember At-Large Rebecca Kaplan

Handwritten signature of Dan Kalb in cursive.

Councilmember Dan Kalb

ARGUMENT IN FAVOR OF PROPOSITION 59

Vote YES on Proposition 59 to help get big money out of politics and restore a government of, by, and for the people.

Corporations and billionaires should not be allowed to continue to buy our elections.

But that's exactly what the United States Supreme Court did in the disastrous *Citizens United v. FEC* ruling. This misguided decision gave corporations the same "rights" as human beings and freed them to spend unlimited amounts of money in our elections. Other recent decisions overturned long-standing laws limiting how much billionaires could spend in an election.

As a result, corporations and their billionaire owners are spending unprecedented amounts of money to tilt the outcomes of our elections in their favor.

Corporations and billionaires should not have a greater voice in our elections than California voters. Corporations spend huge amounts of money to influence election results and make it harder for our voices to be heard.

The Supreme Court was wrong and must be corrected.

Corporations play a vital role in our economy. But corporations aren't people. They don't vote, get sick, or die in wars for our country. The Constitution was written to protect human beings, not corporations. The rights granted to corporations by the Supreme Court allow them to drown out the voices of real people—as voters, consumers, workers, and small business owners.

We The People should have the right to set reasonable limits on the raising and spending of money by candidates and others to influence elections.

Vote YES on Prop. 59 and tell Congress to pass an amendment to the U.S. Constitution that puts an end to this corrosive political spending.

California voters have used ballot measures to instruct and improve our state and local governments before. Prop. 59 allows us to do this on this critical issue.

Real campaign finance reform can only happen with a groundswell of grassroots support from across the country. Let's do our part and vote YES on Proposition 59.

Help send a message to Congress to act now to strengthen our democracy.

Vote YES on Proposition 59.

BEN ALLEN, State Senator

MICHELE SUTTER, Co-Founder

Money Out Voters In

KATHAY FENG, Executive Director

California Common Cause

PROPOSITION
59 CORPORATIONS. POLITICAL SPENDING.
FEDERAL CONSTITUTIONAL PROTECTIONS.
LEGISLATIVE ADVISORY QUESTION.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Asks whether California’s elected officials should use their authority to propose and ratify an amendment to the federal Constitution overturning the United States Supreme Court decision in *Citizens United v. Federal Election Commission*.
- *Citizens United* ruled that laws placing certain limits on political spending by corporations and unions are unconstitutional.
- States that the proposed amendment should clarify that corporations should not have the same constitutional rights as human beings.

SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- No direct fiscal effect on state or local governments.

FINAL VOTES CAST BY THE LEGISLATURE ON SB 254 (PROPOSITION 59)
(CHAPTER 20, STATUTES OF 2016)

Senate:	Ayes 26	Noes 12
Assembly:	Ayes 51	Noes 26

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Political Campaign Spending. Many people, corporations, labor unions, and other groups spend money to influence voters’ decisions in political campaigns. This spending includes:

- **Direct Contributions.** People can give money directly to candidates, political parties, and committees. These direct contributions are subject to federal, state, and local limits. In some cases, federal law does not allow direct contributions. For example, corporations and labor unions may not give money directly to a candidate for a federal office.
- **Independent Expenditures.** A person makes an “independent expenditure” if he or she spends money to influence

voters with no coordination with a candidate or campaign. For example, a person producing a radio commercial urging people to vote for a candidate is making an independent expenditure if the commercial is made without the involvement of the candidate’s campaign.

Independent Expenditures Protected by U.S. Constitution. Before 2010, federal law limited corporations and labor unions’ abilities to make independent expenditures in federal elections. Some California local governments had similar laws for local elections. In 2010, the U.S. Supreme Court determined in the *Citizens United* case that independent expenditures made by corporations and labor unions are a form of speech protected under the Constitution. Based on this determination and related

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

court decisions, government may not limit the right of corporations and labor unions to make independent expenditures. This ruling applies to federal, state, and local governments.

Two-Step Process to Change the Constitution.

The Constitution may be changed through a two-step “amendment” process. Under this process, described below, only the Congress, state legislatures, and—if called by the Congress—constitutional conventions have a role in changing the Constitution. Since the Constitution became law in 1789, 33 amendments have been proposed and 27 amendments have been approved through this process.

- **Step One: The Congress Acts.** The process to change the Constitution begins with the Congress either (1) proposing changes or amendments to the Constitution or (2) calling a constitutional convention to propose amendments after the state legislatures of at least 34 states have asked for such a convention. No amendment has been proposed by a constitutional convention.
- **Step Two: The States Act.** At least 38 states must approve a proposed amendment before it becomes law. Depending on instructions from the Congress, states approve proposed amendments through either the state legislatures or state-level conventions.

Historically, only one amendment—the 21st Amendment repealing the prohibition of the sale of alcoholic beverages—has been approved through state-level conventions rather than by state legislatures.

PROPOSAL

Proposition 59 asks if California’s elected officials should use all of their constitutional authority—including, but not limited to, amending the Constitution—to:

- Reverse the effects of *Citizens United* and related court decisions.
- Allow the regulation and limitation of political campaign spending.
- Ensure individuals are able to express political views.
- Make clear that corporations should not have the same constitutional rights as people.

Proposition 59 is an advisory measure only. It does not require any particular action by the Congress or the California Legislature.

FISCAL EFFECTS

This measure would have no direct fiscal effect on state and local governments.

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee’s top 10 contributors.

pupils or more per school or the parents or legal guardian personally visit the school to apply for the waiver and that they there be provided a full description of the educational materials to be used in the different educational program choices and all the educational opportunities available to the child. Under such parental-waiver conditions, children may be transferred to classes where they are taught English and other subjects through bilingual education techniques or other generally recognized educational methodologies permitted by law. Individual schools in which guardians of 20 pupils or more of a given grade level receive a waiver in any grade request a language acquisition program that is designed to provide language instruction shall be required to offer such a class; otherwise, they must allow the pupils to transfer to a public school in which such a class is offered: program to the extent possible, based upon the requirements of Section 305.

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(b) If a school district implements a language acquisition program pursuant to this section, it shall do both of the following:

(1) Comply with the kindergarten and grades 1 to 3, inclusive, class size requirements specified in Section 42238.02.

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(2) Provide, as part of the annual parent notice required pursuant to Section 48980 or upon enrollment, the parent or legal guardian of a minor pupil with information on the types of language programs available to pupils enrolled in the school district, including, but not limited to, a description of each program.

SEC. 6. Section 311 of the Education Code is repealed. 311. The circumstances in which a parental exception waiver may be granted under Section 310 are as follows:

(a) Children who already know English: the child already possesses good English language skills, as measured by standardized tests of English vocabulary comprehension, reading, and writing, in which the child scores at or above the state average for his or her grade level or at or above the 5th grade average, whichever is lower; or

(b) Older children: the child is age 10 years or older, and it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better suited to the child's rapid acquisition of basic English language skills; or

(c) Children with special needs: the child already has been placed for a period of not less than thirty days during that school year in an English language classroom and it is subsequently the informed belief of the school principal and educational staff that the child has such special physical, emotional, psychological, or educational needs that an alternate course of educational study would be better suited to the child's overall educational development. A written description of these special needs must be provided and any such decision is to be made subject to the examination and approval of the local school superintendent, under guidelines established by and subject to the review of the local Board of Education and ultimately the State Board of Education. The existence of such special needs shall not compel issuance of a waiver, and the parents shall be fully informed of their right to refuse to agree to a waiver.

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SEC. 7. Section 320 of the Education Code is amended to read:

320. As detailed in Article Section 5 of Article IX of the California Constitution, and Article 2 (commencing with

Section 305) and Article 3 (commencing with Section 310), respectively, all California school children have the right to be provided with an English language public education. If a California school child has been denied the option of an English language instructional curriculum in public school, the child's parent or legal guardian shall have legal standing to sue for enforcement of the provisions of this statute, and if successful shall be awarded normal and customary attorney's fees and actual damages, but not punitive or consequential damages. Any school board member or other elected official or public school teacher or administrator who willfully and repeatedly refuses to implement the terms of this statute by providing such a free public education and an English language educational option at an available public school to a California school child may be held personally liable for fees and actual damages by the child's parents or legal guardian: public education.

SEC. 8. Section 335 of the Education Code is amended to read:

335. The provisions of this act may be amended by a statute that becomes effective upon approval by the electorate or by a statute to further the act's purpose passed by a two-thirds majority vote of each house of the Legislature and signed by the Governor.

SEC. 9. Sections 2 to 8, inclusive, of this act shall become operative on July 1, 2017.

PROPOSITION 59

The following advisory question is submitted to the people in accordance with Section 4 of Senate Bill 254 of the 2015-16 Regular Session (Chapter 20, Statutes of 2016).

Advisory Question: "Shall California's elected officials use all of their constitutional authority, including, but not limited to, proposing and ratifying one or more amendments to the United States Constitution, to overturn Citizens United v. Federal Election Commission (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that corporations should not have the same constitutional rights as human beings?"

PROPOSITION 60

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Labor Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The California Safer Sex in the Adult Film Industry Act
The people of the State of California do hereby ordain as follows:

SECTION 1. Title.

This Act shall be known and may be cited as "The California Safer Sex in the Adult Film Industry Act" (the "Act").

SEC. 2. Findings and Declarations.

The people of the State of California hereby find and declare all of the following:

FILED
OFFICE OF THE CITY CLERK
OAKLAND

11 DEC -8 PM 4: 10

OAKLAND CITY COUNCIL

RESOLUTION No. 83662 C.M.S.

Introduced by Council President Larry Reid
And City Attorney Barbara J. Parker

RESOLUTION (1) DECLARING THE CITY OF OAKLAND'S OPPOSITION TO THE UNITED STATES SUPREME COURT'S DECISION IN *CITIZENS UNITED V. FEDERAL ELECTION COMMISSION* WHICH ROLLED BACK RESTRICTIONS ON CORPORATE SPENDING IN THE ELECTORAL PROCESS, RULING THAT CORPORATE CAMPAIGN SPENDING IS CONSTITUTIONALLY PROTECTED SPEECH AND (2) SUPPORTING A CONSTITUTIONAL AMENDMENT TO OVERTURN *CITIZENS UNITED*

WHEREAS, free and fair elections are essential to democracy and effective self-governance; and

WHEREAS, in *Citizens United v. the Federal Elections Commission*, the United States Supreme Court rolled back federal restrictions on corporate spending in the electoral process, allowing unlimited corporate spending to influence elections, candidate selection and policy decisions; and

WHEREAS, the *Citizens United* decision granted corporations unprecedented influence in democratic elections while permitting them to hide their involvement, thereby threatening the voices of the electorate and the foundation of democracy; and

WHEREAS, the *Citizens United* decision may supersede state and local efforts to regulate corporate activity in their campaign finance laws; and

WHEREAS, corporations have used the "rights" bestowed upon them by the courts to overturn democratically enacted laws that were passed at municipal, state and federal levels to curb corporate abuse, thereby impairing local governments' ability to protect their citizens against corporate harms to the environment, to health, to workers, to independent businesses, to local and regional economies; and

WHEREAS, members of both houses of the United States Congress have introduced proposed amendments to the United States Constitution that would overturn the decision in *Citizens United*, and limit corporate influence over federal, state and local elections; now therefore be it

RESOLVED: that the City of Oakland hereby declares its opposition to the United States Supreme Court's decision in *Citizens United v. the Federal Elections Commission*; and be it

FURTHER RESOLVED: that the City of Oakland calls on Congress to approve an amendment to the United States Constitution that would overturn the decision in *Citizens United* and limit corporate influence over federal, state and local elections; and be it

FURTHER RESOLVED: that the City of Oakland directs its federal lobbyist to advocate for legislation to overturn *Citizens United*; and be it

FURTHER RESOLVED that the City of Oakland calls on other communities and jurisdictions to join in this action by passing similar resolutions.

DEC 20 2011

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

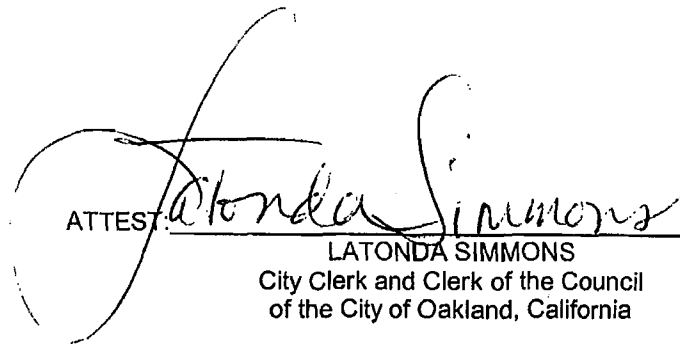
AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF and PRESIDENT REID - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

RECEIVED BY THE CITY CLERK
OAKLAND

Approved as to Form and Legality

DRAFT

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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS REBECCA KAPLAN AND DAN KALB

RESOLUTION IN SUPPORT OF PROPOSITION 59, TO OVERTURN THE CITIZENS UNITED ACT ADVISORY QUESTION

WHEREAS, The United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings, and corporations are not mentioned in the United States Constitution; and

WHEREAS, The Supreme Court in Citizens United v. Federal Election Commission (2010) 558 U.S. 310 (“Citizens United”) held that corporations, like people, have a First Amendment right to spend unlimited amounts of money to influence elections; and

WHEREAS, As a result of the “Citizens United” decision, there has been an explosion in independent political spending and the proliferation of “super PACs,” which are independent political committees that support a candidate with unlimited, often anonymous, donations from companies, unions, or individuals; and

WHEREAS, The 2012 presidential election was the first following the “Citizens United” decision, with more than double the political spending of any previous election; and the independent political spending allowed by “Citizens United” accounted for all of that increase; and

WHEREAS, The “Citizens United” decision presents a serious threat to self-government by rolling back previous bans on corporate spending in the electoral process and allows unlimited corporate spending to influence elections, candidate selection, policy decisions, and public debate; and

WHEREAS, Article V of the United States Constitution empowers and obligates the people 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 form of self-government; and

WHEREAS, Proposition 59 is an “Advisory Question” asking whether California’s elected officials should use all of their constitutional authority, including proposing and ratifying

one or more amendments to the United States Constitution, to overturn the “Citizens United” decision, and other applicable judicial precedents, as specified; and

WHEREAS, Voting “Yes” on Proposition 59 will instruct all of California’s elected officials “to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that corporations should not have the same constitutional rights as human beings”; and

WHEREAS, The California Legislature has been calling for a constitutional amendment that would overturn the “Citizens United” decision since 2012, when it passed joint resolution AJR 22; and

WHEREAS, The City of Oakland’s support of Proposition 59 is consistent with Resolution No. 83662, passed by Oakland City Council in 2011, which declared the City of Oakland’s opposition to the “Citizens United” decision and supported a constitutional amendment to overturn the decision; and

WHEREAS, Proposition 59 is supported by the California Democratic Party, the American Sustainable Business Council, the California League of Conservation Voters (CLCV), the California Nurses Association, and numerous other organizations and individuals; and

WHEREAS, No public funds shall be used in the campaign for Proposition 59; now, therefore be it

RESOLVED: That the Oakland City Council hereby supports Proposition 59.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California