



Peace and Justice Commission

CONSENT CALENDAR
April 27, 2010

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted By: Eric Brenman, Secretary, Peace and Justice Commission
Subject: Reclaiming Democracy and Opposition to Corporate “Rights”

RECOMMENDATION

At its regular meeting on March 1, 2010, the Peace and Justice Commission adopted the following recommendation:

Adopt a Resolution opposing “corporate rights” that extend first amendment protections to corporate campaign spending and supporting **House Joint Resolution 74**—an amendment to the United States Constitution reversing the January 21, 2010 decision of the U.S. Supreme Court in **Citizens United v. the Federal Election Commission**.

M/S/C: (Sorgen, P./Meola, R.)
Ayes: Bohn, D.; Brody, D.; Kenin, W.; Lippman, G.; Litman, J.; Maran, R.; Marley, J.; Meola, B.; Nicely, M.; Sorgen, P.
Noes: Wornick, J.
Abstain: None.
Absent: Sherman, M.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

On January 21, 2010, the Supreme Court of the United States (“SCOTUS”) in **Citizens United v. the Federal Election Commission** reversed long-established constitutional law by extending first amendment and other “rights” to corporations, specifically in regard to holding that corporate campaign spending is “protected speech.”

In reaction to this unprecedented SCOTUS decision, a Joint Resolution was introduced in the U.S. House of Representatives calling for an amendment to the U.S. Constitution

reversing the SCOTUS **Citizens United** decision. (House Joint Resolution 74-- Attachment I).

RATIONALE FOR RECOMMENDATION

The Peace and Justice Commission, consistent with its mandate to promote peace and justice, locally, nationally and internationally, views the recent U.S. Supreme Court decision in **Citizens United v. the Federal Election Commission** to be a direct threat to democracy as it promotes corporate influence and thereby undermines citizen participation in a government "of, by and for the people."

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the Commission's recommendations contained in this Report.

CONTACT PERSON

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Attachments:

- 1) Resolution
- 2) Attachment 1—Text of H.J. Res. 74
- 3) Attachment 2—Annotated notes and references

RESOLUTION NO. -N.S.

SUPPORT FOR HOUSE JOINT RESOLUTION NO. 74 CALLING FOR A CONSTITUTIONAL AMENDMENT PERMITTING CONGRESS AND THE STATES TO REGULATE THE EXPENDITURE OF FUNDS BY CORPORATIONS ENGAGING IN POLITICAL SPEECH

WHEREAS, Chapter 3.68 of the Berkeley Municipal Code sets forth functions of the Peace and Justice Commission including to: "(A) Advise the Berkeley City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice, including, but not limited to support for human rights and self-determination throughout the world;" and

WHEREAS, on June 15, 2004 the Berkeley City Council unanimously passed a Resolution on Corporate Constitutional Rights stating, in part, that "historically corporations were created as artificial entities, chartered by state governments to serve the public interest, cause no harm, and be subordinate to the sovereign people; and yet by judicial interpretations, corporations gained personhood status, free speech and other protections guaranteed by the Bill of Rights and the 14th Amendment," and that "the citizens of the City of Berkeley consider it to be our sovereign right and civic duty to recognize that corporations remain artificial entities created by the people through our state legislatures;" and

WHEREAS, the U.S. Supreme Court 5 to 4 ruling on January 21, 2010 (in *Citizens United v. the Federal Election Commission*) rolled back remaining legal limits on corporate spending in the electoral process, allowing unlimited corporate spending to influence elections, candidate selection, and policy decisions and thus potentially unleashing unprecedented torrents of corporate money in our political process thereby drowning out the voices of "We the People" and threatening democracy;

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley again calls for amending the United States and California Constitutions to declare that corporations are not granted the protections or "rights" of persons and to declare that the expenditure of corporate money is not a form of constitutionally protected speech.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley applauds Congresswoman Donna Edwards for promptly introducing a related amendment to the U.S. Constitution (H.J.RES. 74) and thanks Congresswoman Barbara Lee for co-sponsoring it; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley calls on other communities and jurisdictions to join us in this action by passing similar Resolutions; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley directs the City Manager to send copies of this Resolution to our state and federal government representatives including: Governor Arnold Schwarzenegger, California State Assemblymember Nancy Skinner, California State Senator Loni Hancock, Assembly

Speaker Karen Bass, President pro Tempore of the California State Senate Darrell Steinberg, U.S. Representative Barbara Lee, U.S. Senators Barbara Boxer and Dianne Feinstein, Majority Leader of the U.S. House of Representatives Steny Hoyer, Majority Leader of the U.S. Senate Harry Reid, and President Barak Obama.

ATTACHMENT I

Amendment language:

Proposing an amendment to the Constitution of the United States permitting Congress and the States to regulate the expenditure of funds by corporations engaging in political speech. (Introduced in House)

HJ 74 IH

111th CONGRESS

2d Session

H. J. RES. 74

Proposing an amendment to the Constitution of the United States permitting Congress and the States to regulate the expenditure of funds by corporations engaging in political speech.

IN THE HOUSE OF REPRESENTATIVES

February 2, 2010

Ms. EDWARDS of Maryland (for herself and Mr. CONYERS) 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 permitting Congress and the States to regulate the expenditure of funds by corporations engaging in political speech.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

`Article—

`Section 1. The sovereign right of the people to govern being essential to a free democracy, Congress and the States may regulate the expenditure of funds for political speech by any corporation, limited liability company, or other corporate entity.

`Section 2. Nothing contained in this Article shall be construed to abridge the freedom of the press.'

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ATTACHMENT II

Annotated background materials, footnotes and links

References contained in proposed Resolution:

President Obama called the ruling, "a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans."

<http://www.nytimes.com/2010/01/22/us/politics/22scotus.html>

Senator **John Kerry** "...the Court has struck at the very heart of our democracy, a democracy in which corporations already have too much influence....the system has now been tilted inexorably towards those who have the most money. Now a corporation can just budget corporate funds to support or oppose a candidate and then actively campaign all the way up until the polls close...ruling also clears the way for the domestic subsidiaries of foreign corporations to spend unlimited amounts of money to influence our elections..." <http://kerry.senate.gov/cfm/record.cfm?id=322006>

Senate Judiciary Committee Chair **Patrick Leahy** said the ruling "goes to the very core of our democracy and it will allow major corporations -- who should have law written to control their effect on America -- instead control

America." <http://www.cnn.com/video/#/video/politics/2010/01/28/leahy.alito.president.senatetv?iref=allsearch>

"Corporations have been barred from spending unlimited funds on political races for as long as you and I have lived. For good reason: The typical Fortune 500 company need only spend a small fraction of its profits on political ads to drown out the un-amplified voices of individual citizens...This Supreme Court decision creates new rights for Wall Street at the expense of Main Street...Corporations are not people." Sen. Patrick Leahy (D-Vt)

"The American people already believe that corporate special interests and their lobbyists run the show around here. I mean, the halls are crawling with them. But that's not enough. Now the Court says to the big banks, to the drug companies, to the insurance companies, 'Hey, all bets are off, and it's open season. Our elections are for sale.' A law won't fix this; we have to fix it in the Constitution. So today I'll introduce a constitutional amendment so that we, the people, can take back our elections and our democracy. This is not the People's House Incorporated. We are the people. It's our house, it's our Constitution, and it's our elections. And we plan to take it back from the United States Supreme Court."

U.S. Congresswoman Donna Edwards, Jan. 27, 2010

<http://www.youtube.com/watch?v=ysUr0fj3aRY>

The Jan. 21, 2010 **SCOTUS** ruling: <http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>

Former Senator **Warren Rudman (R-NH)**, "Supreme Court opinion notwithstanding, corporations are not defined as people under the Constitution, and free speech can hardly be called free when only the rich are heard." <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/04/AR2010020403624.html>

Ralph Nader, "...it was not Congress but the Supreme Court that expanded the definition of 'persons' to include for-profit corporations for the purposes of applying constitutional protections. For 30 years, the court has granted First Amendment speech protections to corporations as 'artificial persons.' But not until last month has the court declared that the First Amendment gives corporations the right to spend unlimited money to influence elections....the fundamental response should be a constitutional amendment. We must exclude all commercial corporations and other artificial commercial entities from participating in political activities. Such constitutional rights should be reserved for real people, including, of course, company employees, to enhance a government of, by and for the people. Corporations are not humans. They do not vote." <http://online.wsj.com/article/SB20001424052748704820904575055340863805062.html#articleTabs=article>

Constitutional law expert Jamin Raskin, "American citizens have repeatedly amended the Constitution to defend democracy when the Supreme Court acts in collusion with democracy's enemies, whether they are slave masters, states imposing poll taxes on voters, or the opponents of woman suffrage. Today, the Court has enthroned corporations, permitting them not only all kinds of special economic rights but now, amazingly, moving to grant them the same political rights as the people. This is a moment of high danger for democracy so we must act quickly..."

Senator Chris Dodd, "I strongly disagree with the Supreme Court's conclusion that money is speech, and that corporations should be treated the same as individual Americans when it comes to protected, fundamental speech rights....Ultimately, we must cut through the underbrush and go directly to the heart of the problem, and that is why I am proposing this constitutional amendment." <http://dodd.senate.gov/?q=node/5478>

On Feb 2 **Congresswoman Donna Edwards** introduced H.J.RES.74 for a Constitutional Amendment that by March 3 had 23 co-sponsors including Barbara Lee: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HJ00074:@@@P>

Recipients:

http://www.legislature.ca.gov/the_state_legislature/leadership_and_caucuses/leadership.p.html

http://www.senate.gov/pagelayout/senators/a_three_sections_with_teasers/leadership.htm

http://www.house.gov/house/orgs_pub_hse_ldr_www.shtml

Additional measures addressing the SCOTUS ruling:

On Feb 24, Senator Chris Dodd Introduced S.J.RES.28 for a Constitutional Amendment to Reverse Supreme Court Campaign Finance Ruling, co-sponsored by Senator Tom Udall.

(The text is not yet available.)

<http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s.j.res.00028>:

Interim measures have been introduced by Congressman Alan Grayson:

<http://grayson.house.gov/News/DocumentSingle.aspx?DocumentID=167973>

Maryland state senator Jamin Raskin has introduced interim measures for Maryland:

<http://citizensamendment.net/node/53>

URL's for similar national petitions:

This one garnered 40,000 signatures within a week of the SCOTUS ruling:

<http://www.movetoamend.org/motion-amend>

<http://www.freespeechforpeople.org/the-solution>

"American citizens have repeatedly amended the Constitution to defend democracy when the Supreme Court acts in collusion with democracy's enemies, whether they are slave masters, states imposing poll taxes on voters, or the opponents of woman suffrage. Today, the Court has enthroned corporations, permitting them not only all kinds of special economic rights but now, amazingly, moving to grant them the same political rights as the people. This is a moment of high danger for democracy so we must act quickly to spell out in the Constitution what the people have always understood: that corporations do not enjoy the political and free speech rights that belong to the people of the United States." - Professor Jamin Raskin, constitutional law expert at American University's Washington College of Law and Maryland state senator on Jan. 21. 2010

Berkeley's June 15, 2004 Resolution on Corporate Constitutional "Rights"

<http://74.125.155.132/search?q=cache:35FbvX9S3ewJ:www.ci.berkeley.ca.us/citycouncil/2004citycouncil/packet/061504/2004-06-15%2520Item%252027a.pdf+Berkeley+Resolution+on+Corporate+Constitutional+Rights&cd=1&hl=en&ct=clnk&gl=us&client=safari>

Retired Councilmember Betty Olds re Berkeley's June 15, 2004 Resolution, "It was overdue." and "I voted for it after so many people contacted me in favor of it, plus just common sense that it was the right thing to do."

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