STAFF REPORT
CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: David Ott, City Manager
MEETING DATE: May 14, 2014
ORIGINATING DEPT: City Manager's
SUBJECT: Council Consideration Of A Resolution In Support Of Efforts To Overturn Citizens United

BACKGROUND:
Citizens United v Federal Election Commission (2010) 558 U.S. 310, is a case in which the United States Supreme Court held that the First Amendment prohibits the federal government from restricting political independent expenditures by corporations, associations or labor unions. Generally, corporations, associations or labor unions are no longer barred from using general treasury funds to fund political communications or from promoting candidates and positions close to elections. However, Citizens United did not alter restrictions on direct contributions to candidates. In response, a group called “Money Out of Politics” has organized to attempt to get local municipalities and states to pass resolutions to overturn Citizens United.

Councilmember Zahn requested that this item be brought to the full City Council for discussion and direction to Staff as may be needed. If Council desires to support overturning Citizens United, Staff has prepared Resolution 2014-052 (Attachment 1) for Council consideration.

DISCUSSION:
In Citizens United v Federal Election Commission, the United States Supreme Court held that independent spending on elections by corporations, associations and labor unions could not be limited by government regulation, a decision that allows for unlimited spending by these groups in elections. In reaching its decision, the Supreme Court interpreted the First Amendment to afford these groups the same free speech protections as natural persons. This decision ultimately supersedes state and local efforts to regulate corporate association and labor union activity in their campaign finance laws.

Certain members of Congress are seeking to amend the Constitution in order to reverse the Citizens United decision and establish that corporations, associations, and labor unions are not entitled to the entirety of protections of natural persons. Several municipalities and states have successfully passed resolutions opposing the Supreme Court’s interpretation and supporting Constitutional amendments. It should be noted that in 2012, the California State Senate adopted a resolution calling upon the U.S. Congress to pass a Constitutional amendment to overturn Citizens United.

CITY COUNCIL ACTION: ________________________________

AGENDA ITEM C.3.
The City Council received a package submitted from a local resident, Renita Greenberg, representing “Money Out of Politics San Diego” that has been included in this Staff Report as Attachment 2.

**CEQA COMPLIANCE STATEMENT:**
Not a project as defined by CEQA.

**FISCAL IMPACT:**
Not a project as defined by CEQA.

**WORKPLAN:**
N/A

**OPTIONS:**
- Approve Staff recommendation
- Approve Staff recommendation with modifications
- Deny Staff recommendation

**DEPARTMENT RECOMMENDATION:**
Staff recommends that the City Council:

1. Accept report and provide direction as needed.

2. Should the Council desire to adopt a resolution to show support for overturning *Citizens United*, consider approving Resolution 2014-052 as prepared by Staff with modifications as necessary.

**CITY MANAGER RECOMMENDATION:**
Approve Department Recommendation

David Ott, City Manager

Attachments:
1. Resolution 2014-052
2. Money Out of Politics San Diego Submittal
RESOLUTION 2014 - 052

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, IN SUPPORT OF EFFORTS TO OVERTURN CITIZENS UNITED

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

WHEREAS, in Citizens United v. Federal Election Commission, the United States Supreme Court held that independent spending on elections by corporations, associations or labor unions could not be limited by government regulation, a decision that allows for unlimited spending in elections; and

WHEREAS, in reaching its decision in Citizen’s United, the Supreme Court interpreted the First Amendment of the Constitution to afford corporations, associations or labor unions the same free speech protection as natural persons; and

WHEREAS, certain members of Congress are seeking to amend the Constitution in order to reverse the Citizens United decision and establish that corporations, associations and labor unions are not entitled to the entirety of protections of natural persons; and

WHEREAS, several dozen municipalities, including New York City, Los Angeles, and San Diego, have successfully passed resolutions opposing the Supreme Court’s interpretation of the Constitution in Citizens United and supporting Constitutional amendments.
NOW, THEREFORE BE IT RESOLVED, the City Council for the City of Solana Beach, California, does resolve as follows:

1. That the foregoing recitations are true and correct; and

2. That the Council respectfully disagrees with the Supreme Court's interpretation of the Constitution in *Citizens United v. Federal Election Commission* regarding the rights of corporations, associations and labor unions; and

3. That the City Council calls on the United States Congress to begin a process to protect an individual's right to effectively express himself or herself by ensuring an orderly political forum.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, held on the 14th day of May 2014, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

THOMAS M. CAMPBELL, Mayor

APPROVED AS TO FORM: ATTEST:

__________________________
JOHANNA N. CANLAS, City Attorney ANGELA IVEY, City Clerk
April 24, 2014

To: Peter Zahn  
    Solana Beach City council

Here is the packet I will provide to all city council members next week. I did not intend to include all the Resolution Examples but since Dianne Lane indicated that I would, I wanted you to have these as you work with the City Manager on a proposed resolution.

Please let me know if I can provide any more info.

Thanks,

[Signature]

Renita Greenberg
May 1, 2014

Members of the Solana Beach City Council
c/o City Clerk
635 S. HWY 101
Solana Beach, CA 92075

Subject:
A Resolution Calling for a Constitutional Amendment to
Overturn the *Citizens United* Decision

Dear Members of the Solana Beach City Council,

In 2010, The US Supreme Court ruled that organizations and individuals could spend unlimited amounts of money on any election in the country. Now, all federal, state, and local campaign finance limits can be disregarded by corporations, labor unions, political action committees, and individuals as long as they remain independent and are not connected with any campaign. This includes all city campaign finance limits.

The problem is that any group or individual wanting to dominate an election can simply outspend all other interests. We believe, however, that the residents of Solana Beach should be in control of their own elections and that all participants should abide by local campaign laws.

We are requesting that the city council adopt a resolution urging the Congress and the states to pass and ratify a Constitutional amendment clarifying the right of the people to control their own elections. This amendment would empower the Congress to govern federal elections, the legislature to govern state elections, and the city council to govern city elections.

The *Citizens United* decision allowed a flood of unlimited, often anonymous, campaign spending. For example, in 2012, independent committees in the San Diego mayoral election spent $3.5 million. In 2013, independent committees in the Los Angeles mayoral election spent $10 million. There is no reason to believe that Solana Beach elections will be immune.

San Diego, Long Beach, Los Angeles, Pasadena, Encinitas, Chula Vista, Claremont, Lemon Grove, Redlands, and Upland, along with nearly 50 other cities and 5 counties in California, have adopted resolutions. Nationwide, 500 municipalities and 16 states, including California, have adopted resolutions. The U.S. Conference of Mayors adopted a resolution in June 2012.
And a coalition of organizations, including Common Cause and residents of Solana Beach, are working to pass resolutions in other municipalities such as: Glendale, West Covina, La Mesa, Fullerton, and Fontana to name just a few.

We are respectfully requesting that you support a city council resolution urging the Congress to act and restore the people's power to govern their own elections.

Thank you for your consideration,

[Signature]

Renita Greenberg
327 Pacific Ave
Solana Beach
858 481 3002

Dianne Lane
Money Out of Politics San Diego
dlane4785@gmail.com

Enclosures:

A Sample resolution for Solana Beach
Resolution passed by City of Encinitas
List of Resolutions already adopted in California
Frequently Asked Questions
RESOLUTION EXAMPLES

Resolutions already been adopted by city councils in California.

These examples represent a range of positions on Citizens United from narrow to expansive.

City of Chula Vista Resolution
   Adopted August 6, 2013
   Vote: Yes-5, No-0

City of Claremont Resolution
   Adopted July 12, 2012
   Vote: Yes-3, No-1, Abstain-1

City of Lemon Grove Resolution
   Adopted July 16, 2013
   Vote: Yes-3, No-2

City of Los Angeles Resolution
   Adopted December 6, 2011
   Vote: Yes-11, No-0

City of San Diego Resolution
   Adopted December 4, 2012
   Vote: Yes-8, No-0
CITY OF CHULA VISTA

Adopted August 6, 2013

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA IN SUPPORT
OF A CONSTITUTIONAL AMENDMENT IN RESPONSE TO THE CITIZENS UNITED
CASE RULING TO GIVE THE GOVERNMENT BROAD RIGHTS TO REGULATE
CORPORATE CAMPAIGN ACTIVITIES

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

WHEREAS, in Citizens United v. Federal Election Commission, the United States Supreme
Court held that independent spending on elections by corporations and other groups could not be
limited by government regulation, a decision that allows for unlimited corporate spending in
elections; and

WHEREAS, in reaching its decision in Citizens United, the Supreme Court interpreted the
First Amendment of the Constitution to afford corporations the same political free speech protections
as natural persons in the context of campaign expenditures; and

WHEREAS, the Citizens United decision has proven to be a controversial decision that could
severely limit state and local efforts to regulate corporate activity in the campaign finance laws; and

WHEREAS, in his dissent, Justice John Paul Stevens stated that "[c]orporations have no
consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and
facilitate the activities of human beings, to be sure, and their 'personhood' often serves as a useful
legal fiction. But they are not themselves members of 'We the People' by whom and for whom our
Constitution was established"; and

WHEREAS, members of Congress are seeking to amend the U.S. Constitution in response to
the Citizens United decision to establish that corporations are not entitled to the entirety of political
free speech protections afforded natural persons; and

WHEREAS, several hundred municipalities, including San Diego, New York City, San
Francisco, Chicago, Los Angeles, and Oakland, have successfully passed resolutions supporting
Constitutional amendments to achieve this objective; and

WHEREAS, the City of Chula Vista has a long history of demonstrating support for an
orderly political forum in which individuals may express themselves effectively; to place realistic and
enforceable limits on the amounts of money that may be contributed to political campaigns in
municipal elections; and to prohibit or limit contributions by organizations in order to develop a
broader base of political efficacy within the community.

NOW THEREFORE BE IT RESOLVED, that the City of Chula Vista joins other cities in
calling on Congress to begin the process of amending the Constitution to provide that the ability to
make contributions and expenditures to influence the outcome of public elections belongs only to
natural persons and is no longer a form of constitutionally protected political speech for corporations.
CITY OF CLAREMONT

Adopted July 12, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAREMONT
CALIFORNIA TO SUPPORT AN AMENDMENT TO THE UNITED STATES
CONSTITUTION TO RESTORE THE PEOPLE’S POWER TO LIMIT CORPORATE AND
UNION INFLUENCE IN ELECTIONS AND POLICYMAKING.

WHEREAS The U.S. Supreme Court in the Citizens United and related cases has held that
corporations have the same rights as citizens with regard to free speech and has equated the spending
of money to speech; and

WHEREAS the Supreme Court has interpreted this to mean that corporations may spend
unlimited amounts of money to support or oppose candidates for public office so long as the
corporations do not give their funds directly to a candidates campaign; and

WHEREAS this has led to the formation of Super Political Action Committees (PACs) that
can and have spent millions of dollars to support or oppose candidates for public office; and

WHEREAS these Super PACs, unions, and other organizations have been spending money to
influence Local and State election campaigns as well as those for Federal offices and thereby can
influence elections and elected officials at all levels of government - Local, State and Federal; and

WHEREAS Claremont City elections are vulnerable to just such expenditures by Super
PACs, unions, or other organizations created specifically to influence our City elections; and

NOW, THEREFORE THE CLAREMONT CITY COUNCIL DOES HEREBY
RESOLVE, that the Claremont City Council joins with a growing list of cities, counties, and states in
urging our Congressional Representatives and Senators to propose an Amendment to the U S
Constitution that supports the following four principles:

1. Only people are citizens - corporations, unions, and other entities do not have the same
   rights as citizens to political speech.

2. Money is not speech and the right to spend money is not equivalent to the right of free
   speech.

3. The people, as citizens, working through their governments at every level have the right to
   regulate the amount of money that is contributed directly or indirectly to electoral campaigns by
   individuals corporations unions and all other organizations.

4. The people as citizens have the right to require that all such contributions are publicly
   reported in a timely manner and are on the record to insure the transparency required for a democracy
to function properly.

BE IT FURTHER RESOLVED, that 1) the Claremont City Council pledges to support the
ratification of a congressionally proposed constitutional amendment that effectively addresses the
above four principles and 2) City Staff shall cause this Resolution to be forwarded to all regional,
state and federal elected representatives serving the citizens of Claremont.
CITY OF LEMON GROVE

Adopted July 16, 2013

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA EXPRESSING CONCERN WITH THE CITIZENS UNITED V. FEDERAL ELECTION COMMISION RULING BY THE SUPREME COURT AND CALLING ON THE UNITED STATES CONGRESS TO ADDRESS THE PROTECTION OF AN INDIVIDUAL'S RIGHT TO EFFECTIVELY EXPRESS HIMSELF OR HERSELF BY ENSURING AN ORDERLY POLITICAL FORUM

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

WHEREAS, in Citizens United v. Federal Election Commission (hereinafter referred to as Citizens United), the United States Supreme Court, in a 5 to 4 vote, held that governments could not restrict political independent expenditures by corporations, associations, or labor unions - a decision that allows for unlimited contributions in elections by these entities; and

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

WHEREAS, the State of California, the City of Los Angeles, and the City of San Diego have adopted resolutions opposing the Supreme Court's interpretation of the Constitution in Citizens United and supporting Constitutional amendments; and

WHEREAS, the City of Lemon Grove has a history of demonstrating support for an orderly political forum in which individuals may express themselves effectively.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lemon Grove, California hereby:

1. Respectfully disagrees with the Supreme Court's interpretation of the Constitution in Citizens United v. Federal Election Commission regarding the rights of corporations, associations, and labor unions; and

2. Calls on the United States Congress to begin a process to protect an individual's right to effectively express himself or herself by ensuring an orderly political forum.
CITY OF LOS ANGELES

Adopted December 6, 2011

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; and

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 20 I 1-20 12 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.

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.
CITY OF SAN DIEGO

Adopted December 4, 2012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO IN SUPPORT OF A CONSTITUTIONAL AMENDMENT TO OVERTURN CITIZENS UNITED.

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

WHEREAS, in Citizens United v. Federal Election Commission, the United States Supreme Court held that independent spending on elections by corporations and other groups could not be limited by government regulation, a decision that allows for unlimited corporate spending in elections; and

WHEREAS, in reaching its decision in Citizens United, the Supreme Court interpreted the First Amendment of the Constitution to afford corporations the same free speech protections as natural persons; and

WHEREAS, the Citizens United decision has proven to be one of the Court's most controversial decisions and supersedes state and local efforts to regulate corporate activity in their campaign finance laws; and

WHEREAS, in his eloquent dissent, Justice John Paul Stevens stated that "[c]orporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their 'personhood' often serves as a useful legal fiction. But they are not themselves members of 'We the People' by whom and for whom our Constitution was established"; and

WHEREAS, members of Congress are seeking to amend the Constitution in order to reverse the Citizens United decision and establish that corporations are not entitled to the entirety of protections of natural persons; and

WHEREAS, several dozen municipalities, including New York City, Los Angeles, and Oakland, have successfully passed resolutions opposing the Supreme Court's interpretation of the Constitution in Citizens United and supporting Constitutional amendments; and

WHEREAS, the City of San Diego has a long history of demonstrating support for an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; and to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community, as reflected in the San Diego Municipal Election Campaign Control Ordinance; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that it respectfully disagrees with the Supreme Court's interpretation of the Constitution in Citizens United regarding the rights of corporations; and

BE IT FURTHER RESOLVED, that the Council joins other cities in calling on Congress to begin the process of amending the Constitution to provide that corporations are not entitled to the
entirety of protections or "rights" of natural persons, specifically so that the expenditure of corporate
money to influence the electoral process is no longer a form of constitutionally protected speech.
RESOLUTION 2014-19

A RESOLUTION OF THE CITY OF ENCINITAS IN SUPPORT OF A CONSTITUTIONAL AMENDMENT TO OVERTURN CITIZENS UNITED

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

WHEREAS, in *Citizens United v. Federal Election Commission*, the United States Supreme Court held that independent spending on elections by corporations and other groups could not be limited by government regulation, a decision that allows for unlimited corporate spending in elections; and

WHEREAS, in reaching its decision in *Citizen's United*, the Supreme Court interpreted the First Amendment of the Constitution to afford corporations the same free speech protections as natural persons; and

WHEREAS, the *Citizens United* decision has proven to be one of the Court's most controversial decisions and supersedes state and local efforts to regulate corporate association and labor union activity in their campaign finance laws; and

WHEREAS, in his eloquent dissent Justice John Paul Stevens stated that "[c]orporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their 'personhood' often serves as a useful legal fiction. But they are not themselves members of 'We the People' by whom and for whom our Constitution was established"; and

WHEREAS, members of Congress are seeking to amend the Constitution in order to reverse the *Citizens United* decision and establish that corporations are not entitled to the entirety of protections of natural persons; and

WHEREAS, Several dozen municipalities, including New York City, Los Angeles, and San Diego, have successfully passed resolutions opposing the Supreme Court's interpretation of the Constitution in *Citizens United* and supporting Constitutional amendments; and

WHEREAS, the City of Encinitas has a long history of demonstrating support for an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; and to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community;

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Encinitas that it respectively disagrees with the Supreme Court's interpretation of the Constitution in *Citizens United* regarding the rights of corporation associations and labor unions; and
CALIFORNIA RESOLUTIONS

Albany
Arcata
Berkeley - 2 resolutions
California
Campbell
Chico
Chula Vista
Claremont
Coachella
Davis
Encinitas
Fairfax
Fremont City
Fort Bragg
Lemon Grove
Long Beach
Los Altos Hills
Los Angeles Council
Los Angeles Voter Initiative
Malibu
Marin County
Marina
Mendocino County Board of Supervisors
Mountain View
Napa
Nevada City
Oakland

Ojai
Oxnard
Pacific Grove
Pasadena
Petaluma
Plumas County Board of Supervisors
Point Arena
Redlands
Richmond Council
Richmond Voter Initiative
San Diego
San Francisco Council
San Francisco Voter Initiative
San Jose
Santa Cruz
Santa Monica
Sebastopol
Sonoma City
Sonoma County Board of Supervisors
Thousand Oaks
UC Berkeley Student Association
UC San Diego Student Association
Upland
Ventura County Board of Supervisors
West Hollywood

STATES

California
Colorado
Connecticut
Delaware
Hawaii
Illinois
Maine
Maryland

Massachusetts
Montana
New Jersey
New Mexico
Oregon
Rhode Island
Vermont
West Virginia
Frequently Asked Questions

Why should the city get involved? This is a federal matter.

Your city is already involved and so are you. The fact that you have elections makes you vulnerable to independent expenditures. For instance:

1. 2012 - San Diego mayoral election - $3.5 million in independent expenditures
2. 2013 - Los Angeles mayoral election $10.5 million in independent expenditures
3. 2012 - Fullerton Council members recall election $300,000 in independent expenditures

Is this a conservative or liberal issue?

Both. Liberals and conservatives are equally vulnerable to independent expenditures, not just from the opposing party, but from within their own party.

Are unions included?

Yes. The amendment includes unions, corporations, political action committees, and individuals.

Passing an amendment is very difficult. Why bother?

Amendments gave us the Bill of Rights, gave women and 18 year olds the right to vote, and abolished slavery, for example. Some difficult things are very worthwhile.

If you restrict money, don't you also restrict free speech?

We already limit free speech, as well as every other freedom we have. We are not allowed to say anything we want at any time. Since speech is already regulated, campaign money should be regulated as well.

A resolution from our city won't change a Supreme Court decision. Why should we get involved?

Your city resolution by itself will not change things. But adding your city to all the other city, county and state resolutions builds a wave of support and helps Congress to act.
Greetings
I have learned that this evening the Solana Beach City Council will vote on a resolution to support reversing Citizens United.
This resolution was put on the agenda by councilman Peter Zahn. Both CMs David Zito and Lesa Heebner have indicated they will support a resolution.
I want to add my voice to thank Council members Zahn, Zito and Heebner for working to reverse Citizens United and look forward to hearing that this resolution has passed.
Thank you.

Cindy Davenport, Office Manager
Butler Sun Solutions, Inc.
SOLAR HOT WATER - Made in Solana Beach!
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