



Jesse Arreguín
Councilmember, District 4

RECEIVED AT
COUNCIL MEETING OF:

MAR 06 2012

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

(Continued Business A.) **REVISED**

ACTION CALENDAR

March 6, 2012

(Continued from February 28, 2012)

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguin
Subject: Resolution to Amend the Constitution to End Corporate Personhood

RECOMMENDATION:

Adopt a resolution **1) reaffirming the City of Berkeley's position that corporations are not persons, 2) urging our federal representatives to amend the constitution to reverse Citizens United v. the Federal Elections Commission to end corporate personhood, and 3) support Assembly Joint Resolution 22 by Assemblymembers Wieckowski and Allen, and Senate Joint Resolution 33 by US Senator Bernie Sanders calling for Constitutional Amendments to end corporate personhood.**

BACKGROUND:

Corporate personhood commonly refers to the Supreme Court-created notion of corporations enjoying constitutional rights that were intended solely for human beings, such as freedom of speech. As a result of decades of rulings furthering that notion, Corporations today are granted privileges that enable them to have undue influence over our elections and legislative process, culminating in the 2010 U.S. Supreme Court decision, Citizens United vs. the Federal Election Commission (Citizens United), which allowed corporations to spend unlimited money on behalf of, or against, candidates on First Amendment grounds.

The City of Berkeley has expressed on numerous occasions its position that corporations are not people and thus not entitled to the protections or rights of persons beyond matters of property and contracts. In 2004, City Council adopted a resolution supporting the amending of the US and California Constitutions to declare that corporations are not granted the protections or rights of person. In 2010, after the Supreme Court decided the expenditure of corporate money is a form of constitutionally protected

IN REPLY TO
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WALDO Y. HARRIS
YH
12/21/10 YH

speech in Citizens United, City Council adopted a resolution calling for a constitutional amendment ending corporate personhood.

In California, Assemblymembers Bob Wieckowski and Michael Allen have introduced Assembly Joint Resolution, coauthored by Senator Loni Hancock, expressing disagreement with the Citizens United decision and calls upon the United States Congress to propose and send to the states for ratification a constitutional amendment to overturn that decision and restore constitutional rights and fair elections to the people.

At the Federal level, US Senator Bernie Sanders has introduced Senate Joint Resolution 33, which proposes an amendment to the Constitution expressly excluding for-profit corporations from the rights given to natural persons by the Constitution of the United States, prohibiting corporate spending in all elections, and affirming the authority of Congress and the States to regulate corporations and to regulate and set limits on all election contributions and expenditures.

FINANCIAL IMPLICATIONS:

None.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

ATTACHMENTS:

1. Resolution
2. **AJR 22**
3. **SJR 33**

RESOLUTION NO.

URGING OUR FEDERAL REPRESENTATIVES TO AMEND THE CONSTITUTION TO END CORPORATE PERSONHOOD

WHEREAS, The protections afforded by the First Amendment to the United States Constitution to the people of our nation are fundamental to our democracy; and

WHEREAS, The First Amendment to the United States Constitution was designed to protect the free speech rights of people, not corporations; and

WHEREAS, Corporations are not people but, instead, are entities created by the laws of states and nations; and

WHEREAS, For the past three decades, a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade and invalidate democratically enacted reforms; 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 United v. FEC** decision supersedes state and local efforts to regulate corporate activity in their elections;

NOW THEREFORE, BE IT RESOLVED **by the Council of the City of Berkeley that it hereby affirms that corporations are not entitled to the protections or rights of persons and that the expenditure of corporate money is not a form of constitutionally protected speech.**

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that it hereby stands with communities across the country to defend democracy from the corrupting effects of undue corporate power by urging our **Federal elected officials to** amending the United States Constitution to **reverse Citizens United v. FEC.** establish that:

- ~~—1. Only human beings, not corporations, are endowed with constitutional rights, and~~
- ~~—2. Money is not speech, and therefore regulating political contributions and spending is not equivalent to limiting political speech.~~

BE IT FURTHER RESOLVED that the City of Berkeley hereby supports Assembly Joint Resolution 22 by Assemblymembers Bob Wieckowski and Michael Allen, and Senate Joint Resolution 33 by US Senator Bernie Sanders, calling for an amendment to the United States Constitution ending corporate personhood.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President Barack Obama, Congresswoman Barbara Lee, United States Senators Barbara Boxer, and Diane Feinstein and Bernie Sanders, Assemblymembers Bob Wieckowski, Michael Allen and Nancy Skinner, and State Senator Loni Hanock.

**ASSEMBLY JOINT
RESOLUTION**

No. 22

**Introduced by Assembly Member Wieckowski, Allen
(Coauthor(s): Assembly Member Ammiano, Hayashi, Hill, Huffman)
(Coauthor(s): Senator Hancock, Lieu)**

January 05, 2012

Relative to campaign finance reform.

LEGISLATIVE COUNSEL'S DIGEST

AJR 22, as introduced, Wieckowski. Campaign finance reform.

This measure would memorialize the Legislature's disagreement with the decision of the United States Supreme Court in *Citizens United v. Federal Election Commission*, and would call upon the United States Congress to propose and send to the states for ratification a constitutional amendment to overturn *Citizens United v. Federal Election Commission* and to restore constitutional rights and fair elections to the people.

DIGEST KEY

Fiscal Committee: no Urgency: no Tax Levy: no

BILL TEXT

WHEREAS, The protections afforded by the First Amendment to the United States Constitution to the people of our nation are fundamental to our democracy; and

WHEREAS, The First Amendment to the United States Constitution was designed to protect the free speech rights of people, not corporations; and

WHEREAS, Corporations are not people but, instead, are entities created by the laws of states and nations; and

WHEREAS, For the past three decades, a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade and invalidate democratically enacted reforms; and

WHEREAS, This corporate misuse of the First Amendment and the United States Constitution reached an extreme conclusion in the United States Supreme Court's ruling in *Citizens United v. Federal Election Commission* (2010) 130 S.Ct. 876; and

WHEREAS, The United States Supreme Court's ruling in *Citizens United v. Federal Election Commission* overturned longstanding precedent prohibiting corporations from spending their general treasury funds in our elections; and

WHEREAS, The opinion of the four dissenting justices in *Citizens United v. Federal Election Commission* noted that corporations have special advantages not enjoyed by natural persons, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets, that allow them to spend prodigious sums on campaign messages that have little or no correlation with the beliefs held by natural persons; and

WHEREAS, The United States Supreme Court's ruling in *Citizens United v. Federal Election Commission* will now unleash a torrent of corporate money in our political process unmatched by any campaign expenditure totals in United States history; and

WHEREAS, *Citizens United v. Federal Election Commission* purports to invalidate state laws and state constitutional provisions separating corporate money from elections; and

WHEREAS, The United States Supreme Court's ruling in *Citizens United v. Federal Election Commission* represents a serious and direct threat to our democracy; and

WHEREAS, The general public and political leaders in the United States have recognized, since the founding of our country, that the interests of corporations do not always correspond with the public interest and that, therefore, the political influence of corporations should be limited; and

WHEREAS, In 1816, Thomas Jefferson wrote, "I hope we shall ... crush in [its] birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country"; and

WHEREAS, Article V of the United States Constitution empowers and obligates the people and states 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, Notwithstanding the decision in Citizens United v. Federal Election Commission, legislators have a duty to protect democracy and guard against the potentially detrimental effects of corporate spending in local, state, and federal elections; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully disagrees with the majority opinion and decision of the United States Supreme Court in Citizens United v. Federal Election Commission; and be it further

Resolved, That the Legislature of the State of California calls upon the United States Congress to propose and send to the states for ratification a constitutional amendment to overturn Citizens United v. Federal Election Commission and to restore constitutional rights and fair elections to the people; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, and to each Senator and Representative from California in the Congress of the United States.

112th CONGRESS

1st Session

S. J. RES. 33

Proposing an amendment to the Constitution of the United States to expressly exclude for-profit corporations from the rights given to natural persons by the Constitution of the United States, prohibit corporate spending in all elections, and affirm the authority of Congress and the States to regulate corporations and to regulate and set limits on all election contributions and expenditures.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2011

Mr. SANDERS (for himself and Mr. BEGICH) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to expressly exclude for-profit corporations from the rights given to natural persons by the Constitution of the United States, prohibit corporate spending in all elections, and affirm the authority of Congress and the States to regulate corporations and to regulate and set limits on all election contributions and expenditures.

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 rights protected by the Constitution of the United States are the rights of natural persons and do not extend to for-profit corporations, limited liability companies, or other private entities established for business purposes or to promote business interests under the laws of any state, the United States, or any foreign state.

'Section 2. Such corporate and other private entities established under law are subject to regulation by the people through the legislative process so long as such regulations are consistent with the powers of Congress and the States and do not limit the freedom of the press.

'Section 3. Such corporate and other private entities shall be prohibited from making contributions or expenditures in any election of any candidate for public office or the vote upon any ballot measure submitted to the people.

'Section 4. Congress and the States shall have the power to regulate and set limits on all election contributions and expenditures, including a candidate's own spending, and to authorize the establishment of political committees to receive, spend, and publicly disclose the sources of those contributions and expenditures.'