

Date of Hearing: April 9, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 644 (Wieckowski) – As Introduced: February 20, 2013

SUBJECT: Campaign finance: advisory election.

SUMMARY: Requires a statewide advisory vote on the November 2014, general election ballot on amending the United States Constitution to address campaign financing issues. Specifically, this bill:

- 1) Requires the following advisory question to be placed on the ballot at the November 4, 2014, statewide general election:

Shall the members of the Congress of the United States representing California propose and support, and the California Legislature ratify, an amendment to the United States Constitution that reverses the Supreme Court's ruling in Citizens United v. Federal Elections Commission (2010) 558 U.S. 310, and limits campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another and their government on a level playing field?

- 2) Contains the following Legislative findings and declarations:

- a) Large campaign contributions to political candidates create the potential for corruption and the appearance of corruption;
- b) Large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process;
- c) The rising costs of campaigning for political office prevent qualified citizens from running for political office;
- d) Because of early voting in California, timely notice of independent expenditures is essential for informing the electorate;
- e) In recent years, the advent of significant spending on electioneering communications has frustrated the purpose of campaign finance requirements;
- f) Independent research has demonstrated that the vast majority of televised electioneering communications go beyond issue discussion to express electoral advocacy;
- g) Political contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas and can unfairly influence the outcome of California elections; and,

- h) The interests of the public are best served by limiting campaign contributions, establishing campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

EXISTING LAW authorizes each city, county, school district, community college district, county board of education, or special district to hold an advisory election on any date on which that jurisdiction is permitted to hold a regular or special election for the purpose of allowing voters within the jurisdiction, or a portion thereof, to voice their opinions on substantive issues, or to indicate to the local legislative body approval or disapproval of the ballot proposal.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the Bill: According to the author:

When Citizens United was handed down in 2010, many were outraged and knew that this decision would forever change the way elections were run. But the consequences of Citizens United would not really be felt until it could be put to the test. One Presidential election cycle later, we have now seen this abominable case's aftermath in the form of a record \$7 billion being spent. Of the 7, nearly \$1 billion in new political spending was unleashed. Media outlets and a small number of political consulting firms raked in the bulk of the proceeds.

The Federal Election Commission released last election's spending records. They show that throughout the 2012 election, corporations, unions and individuals that could take advantage of the Court's ruling were responsible for about \$933 million of the estimated \$6 billion spent during the contest.

AB 644 will allow Californians to have their voices heard on the matter of Citizens United in the most appropriate way – by a vote. The bill provides the opportunity to resoundingly say "NO" to judicial activism and nefarious corporate electioneering facilitated through SuperPACs. One election with Citizens United is enough to see the damage that can be done and it is time to urge California members of Congress to introduce legislation and/or support legislation to overturn this calamitous holding. AB 644 seeks to ensure all citizens, regardless of wealth, may express their views to one another and their government on a level playing field.

- 2) Past Advisory Elections: While existing state law explicitly authorizes cities, counties, school districts, community college districts, county boards of education, and special districts to hold advisory elections, there is no explicit authorization, nor is there a statutory prohibition, for a statewide advisory election. While statewide advisory elections are uncommon, in at least two other instances in California's history, one or more statewide advisory measures have appeared on the ballot. At a statewide special election in June 1933, voters rejected Propositions 9 and 10, which asked the voters whether the Legislature should divert gasoline tax revenues to the general fund to pay off highway bonds. These two

measures were put on the ballot by the Legislature. Additionally, at the November 1982 statewide general election, voters approved Proposition 12, a measure that urged the United States government to propose to the Soviet Union that both countries agree to immediately halt the testing, production and further deployment of all nuclear weapons, missiles and delivery systems in a way that could be checked and verified by both sides. Unlike this bill, however, the advisory question decided by the voters in 1982 was placed on the ballot by initiative.

Subsequent to the voters' approval of Proposition 12 in 1982, the California State Supreme Court ruled in American Federation of Labor v. Eu (1984) 36 Cal.3d 687, that placing advisory questions before the voters was not a proper use of the initiative power, because "an initiative which seeks to do something other than enact a statute—which seeks to render an administrative decision, adjudicate a dispute, or declare by resolution the views of the resolving body—is not within the initiative power reserved by the people." In that case, the Court ordered an initiative measure which sought to compel the Legislature to apply to Congress to hold a constitutional convention to adopt a federal balanced budget amendment to be removed from the ballot. The Court's decision in American Federation of Labor did not, however, rule on whether it was permissible for the Legislature to place an advisory question before the voters.

- 3) Citizens United v. FEC: In January 2010, the United States Supreme Court issued its ruling in Citizens United v. Federal Election Commission (2010) 558 U.S. 310, a case involving a nonprofit corporation (Citizens United) that sought to run television commercials promoting a film it produced that was critical of then-Senator and presidential candidate Hillary Clinton. Because federal law prohibited corporations and unions from using their general treasury funds to make expenditures for "electioneering communications" or for communications that expressly advocated the election or defeat of a candidate, Citizens United was concerned that the television commercials promoting its film could subject the corporation to criminal and civil penalties. In its decision, the Supreme Court struck down the 63-year old law that prohibited corporations and unions from using their general treasury funds to make independent expenditures in federal elections, finding that the law unconstitutionally abridged the freedom of speech.
- 4) California Has Already Called Upon Congress to Propose an Amendment to Overturn Citizens United: Last session, the Legislature approved AJR 22 (Wieckowski & Allen), Resolution Chapter 69, Statutes of 2012, which called upon the United States Congress to propose and send to the states for ratification a constitutional amendment that would overturn Citizens United. Given that the State of California already has gone on record in support of an amendment to the United States Constitution to overturn Citizens United, it is unclear what would be accomplished by a statewide advisory election that was not already accomplished through the passage of AJR 22.
- 5) Arguments in Support: In support of this bill, California Common Cause writes:

Since the decision [in Citizens United], Common Cause has partnered with numerous groups across the nation and in every state to build a grassroots movement to support a constitutional amendment to overturn Citizens United. The energy and passion expressed by California voters has resulted in the cities of

Oakland, San Francisco, Los Angeles, and many other municipalities approving city council resolutions calling for Citizens overturning. The cities of Richmond and San Francisco and the states of Colorado and Montana, all passed voter instruction measures, like AB 644, in November 2012 by margins between 70-80 percent! The City of Los Angeles will vote on their own voter instruction measure (Proposition C) this May. Last session, the California Legislature...also approved of Assembly Joint Resolution 22 (Wieckowski) which stated the Legislature's disapproval of Citizens United.

We strongly believe it is time for all California voters to have the opportunity to express their opinion by voting on this statewide question. Voters of this state are eager to express their disapproval of Citizens United and they should be given every opportunity to do so. States and local jurisdictions must take a leadership role in overturning this decision, because Washington DC is looking to us for guidance.

- 6) Related Legislation: AJR 1 (Gatto), which is pending on the Assembly Floor, applies to the United States Congress to call a constitutional convention for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be democratically limited.
- 7) Previous Legislation: AB 78 (Mendoza) of 2011, would have placed a question before voters at the June 5, 2012, statewide primary election asking whether the President and the Congress should create a pathway to citizenship for certain undocumented immigrants. AB 78 was gutted-and-amended and used for another purpose, and was never heard in committee.

AB 2826 (Mendoza) of 2008, was similar to AB 78 of 2011, except that the advisory question would have been considered by voters at the November 4, 2008, statewide general election. AB 2826 was never heard in committee.

SB 924 (Perata) of 2007, would have placed a question before the voters at the February 5, 2008, statewide presidential primary election asking whether the President should end the United States occupation of Iraq. SB 924 was vetoed by Governor Schwarzenegger, who argued that "[p]lacing a non-binding resolution on Iraq on the...ballot, when it carries no weight or authority, would only...divide voters and shift attention from other critical issues that must be addressed."

AB 3 (Statham) of 1993, would have placed a question before the voters at the November 8, 1994, statewide general election asking whether the Legislature should send a plan to Congress requesting the division of the state of California into three states. AB 3 was approved by the Assembly, but was never heard in a committee in the Senate.

- 8) Bill Calling an Election: Because this bill calls an election within the meaning of Article IV of the Constitution, this bill would go into immediate effect if signed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause  
California State Grange  
CALPIRG  
Public Citizen

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094