

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

SB 254 (Allen and Leno) – As Amended April 14, 2016

SENATE VOTE: (not relevant)

SUBJECT: Campaign finance: voter instruction.

SUMMARY: Places an advisory measure on the November 8, 2016, statewide general election ballot on amending the United States Constitution to address campaign finance issues.

Specifically, **this bill:**

- 1) Calls a special election for November 8, 2016, to be consolidated with the statewide general election held on that date, and requires the following question to be placed on the ballot at that election:

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 Elections 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 constitutional rights of human beings?

- 2) Contains the following Legislative findings and declarations:

- a) The United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings.
- b) Corporations are not mentioned in the United States Constitution and the people have never granted constitutional rights to corporations, nor have we decreed that corporations have authority that exceeds the authority of "We the People."
- c) In *Connecticut General Life Insurance Company v. Johnson* (1938) 303 U.S. 77, United States Supreme Court Justice Hugo Black stated in his dissent, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations."
- d) In *Austin v. Michigan Chamber of Commerce* (1990) 494 U.S. 652, the United States Supreme Court recognized the threat to a republican form of government posed by "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."
- e) In *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, the United States Supreme Court struck down limits on electioneering communications that were

upheld in *McConnell v. Federal Election Commission* (2003) 540 U.S. 93 and *Austin v. Michigan Chamber of Commerce*. This 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.

- f) In *Citizens United v. Federal Election Commission*, Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor noted in their dissent 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 huge sums on campaign messages that have little or no correlation with the beliefs held by natural persons.
- g) Corporations have used the artificial rights bestowed on them by the courts to overturn democratically enacted laws that municipal, state, and federal governments passed to curb corporate abuses, thereby impairing local governments' ability to protect their citizens against corporate harms to the environment, consumers, workers, independent businesses, and local and regional economies.
- h) In *Buckley v. Valeo* (1976) 424 U.S. 1, the United States Supreme Court held that the appearance of corruption justified some contribution limitations, but it wrongly rejected other fundamental interests that the citizens of California find compelling, such as creating a level playing field and ensuring that all citizens, regardless of wealth, have an opportunity to have their political views heard.
- i) In *First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765 and *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley* (1981) 454 U.S. 290, the United States Supreme Court rejected limits on contributions to ballot measure campaigns because it concluded that these contributions posed no threat of candidate corruption.
- j) In *Nixon v. Shrink Missouri Government PAC* (2000) 528 U.S. 377, United States Supreme Court Justice John Paul Stevens observed in his concurrence that "money is property; it is not speech."
- k) A February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the ruling in *Citizens United*.
- l) 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 the republican form of self-government.
- m) Article I of the California Constitution guarantees the right of the people to instruct their representatives, petition government for redress of grievances, and assembly freely to consult for the common good.

- n) The people of California and of the United States have previously used ballot measures as a way of instructing their elected representatives about the express actions they want to see them take on their behalf, including provisions to amend the United States Constitution.
 - o) California's United States Senators and Representatives would benefit from having instructions from California voters about the United States Supreme Court's ruling in *Citizens United* and other judicial precedents in taking congressional action.
- 3) Requires the Secretary of State (SOS) to communicate the results of the vote on the measure to Congress.
 - 4) Waives various deadlines and other provisions of the Elections Code so that this measure may appear on the ballot at the November 8, 2016, election, in the event that this bill is chaptered after the statutory deadline for a legislative measure to appear on the ballot at that election. Provides that if this bill is chaptered after the statutory deadline for a legislative measure to appear on the ballot at the November 8, 2016, election, it and any other legislative measure placed on the ballot after the statutory deadline shall be placed on the ballot following all other ballot measures, in the order in which they qualified as determined by chapter number.
 - 5) Requires the SOS to submit this measure to the voters at the next occurring election if the SOS is prohibited by a court order from placing this measure on the ballot at the November 8, 2016, pending resolution of an unsuccessful legal challenge to the validity of this bill.
 - 6) Calls an election within the meaning of Article IV of the Constitution, thereby allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) 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.
- 2) Requires every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature.
- 3) Provides, pursuant to the state constitution, that statutes calling elections shall go into effect immediately upon their enactment.
- 4) Requires Congress, pursuant to Article V of the United States Constitution, to call a convention for proposing amendments to the United States Constitution on application of the legislatures of two-thirds of the states. Provides, pursuant to Article V of the United States

Constitution, that a constitutional amendment that has been proposed by Congress or by a national convention shall become law when ratified by the legislatures of, or by conventions in, three-fourths of the states.

FISCAL EFFECT: Unknown

COMMENTS:

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

SB 254 would place a measure on the November 2016 ballot asking voters whether California's elected officials should 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* 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 constitutional rights as human beings.

In 2014, the Legislature approved SB 1272 (Lieu), which placed an advisory measure on the November 2014 statewide ballot asking California voters whether Congress should propose an amendment to the Constitution to overturn the *Citizens United v. Federal Election Commission* decision. The Court's ruling rolled back the previous ban on corporate spending in federal elections, opening the door to unlimited corporate funds being spent on influencing elections, candidate selection, policy decisions and public debate.

According to California Common Cause, since the *Citizens United* ruling was handed down, spending by Super PACs – funded by organizations whose contribution limits were lifted – has reached \$1 billion. More than \$600 million of that total has come from just 195 donors and their spouses.

In response to an August 2014 challenge by the Howard Jarvis Taxpayers Association, the California Supreme Court ordered that the measure (Proposition 49) be removed from the ballot while they considered whether the legislature has the authority to place advisory questions on the ballot. On January 4, 2016, the Court issued its decision concluding that the legislature could pose this particular advisory question to the voters because it was related to potential federal constitutional amendments. The Court also said that since the previous bill, SB 1272, required the measure to go on the November 2014 ballot, and since that election has now passed, the legislature would have to pass another bill to place it on a future ballot.

On January 19, 2016, the legislature filed a petition with the Supreme Court requesting that they modify their opinion and direct the [SOS] to place SB 1272's advisory question on the November 2016 General Election ballot without the need

for the legislature to take further action. On February 24, 2016, the court rejected the petition. SB 254 takes the next step to place a virtually identical measure on the November 2016 ballot.

- 2) **Past Advisory Questions, Previous Legislation, and Litigation:** While existing state law explicitly authorizes cities, counties, school districts, community college districts, county boards of education, and special districts to place advisory questions on the ballot, there is no explicit authorization, nor is there a statutory prohibition, for statewide advisory questions. Although statewide advisory questions are uncommon, at least eight advisory questions have appeared on the statewide ballot in California's history. Seven of those questions were placed on the ballot by the Legislature (most recently in 1933). The eighth advisory question, which dealt with nuclear disarmament, was placed on the ballot by the initiative process and appeared on the statewide ballot in November 1982 as Proposition 12.

Subsequent to the voters' consideration 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." The Court's decision in *American Federation of Labor* did not, however, rule on whether it is permissible for the Legislature to place an advisory question before the voters.

As noted in the author's statement above, SB 1272 (Lieu), Chapter 175, Statutes of 2014, proposed to place a question on the ballot at the November 2014 general election that was similar to the question that this bill seeks to place on the ballot at the November 2016 election.

SB 1272 became law without the Governor's signature; in a message announcing that he was allowing the measure to become law without his signature, Governor Brown stated that "we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect" and indicated that while he was willing to allow the specific advisory question in SB 1272 to be placed on the ballot, he was "not inclined to repeat this practice of seeking advisory opinions from voters." As a result, the advisory question was scheduled to appear on the ballot in November 2014, and was designated as Proposition 49.

In August 2014, however, the California Supreme Court ordered that Proposition 49 be removed from the ballot while it considered the question of whether the California Legislature had the authority to place advisory questions on the ballot. Earlier this year, the Supreme Court ruled in *Howard Jarvis Taxpayers Association v. Padilla* (2016) 62 Cal. 4th 486, that the Legislature had the authority to place Proposition 49 on the ballot. The majority opinion found that Proposition 49 was "a reasonable and lawful means of assisting the Legislature in the discharge" of its powers under Article V of the United States Constitution in connection with federal constitutional amendments.

The Court's holding in *Howard Jarvis Taxpayers Association* only addressed advisory

measures that were related to potential federal constitutional amendments. The majority opinion noted that because Proposition 49 relates to the exercise of power in connection with Article V, it was "reserv[ing] for another day" the question of whether the Legislature has the authority to place advisory measures on the ballot with respect to questions that do not relate to potential federal constitutional amendments.

Although the Supreme Court's decision concluded that the Legislature had the authority to place Proposition 49 on the ballot, the decision also noted that SB 1272 expressly provided for that question to be placed on the November 2014 ballot. Since that election has already occurred, the Court decided that the Legislature would need to pass another bill if it wanted the advisory question to be considered by the voters at a different election.

Earlier this year, the Legislature filed a petition for rehearing with the Supreme Court requesting that the Court modify its opinion in *Howard Jarvis Taxpayers Association* to direct the SOS to place SB 1272's advisory question on the November 2016 general election ballot without the need for the Legislature to take further action. On February 24, the Supreme Court denied that petition without comment.

- 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 Legislature Has Taken Steps to Overturn *Citizens United***: During the 2011-2012 Legislative 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*. Additionally, during the 2013-2014 Legislative Session, the Legislature approved AJR 1 (Gatto), Resolution Chapter 77, Statutes of 2014, which applied to the United States Congress to call a constitutional convention pursuant to Article V of the United States Constitution 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 legislatively limited.
- 5) **Legislative Deadlines for Placing a Measure on the Ballot**: As detailed above, existing law requires measures submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature. The statutory deadline to place a measure on the ballot for the November 8,

2016 statewide election is June 30, 2016. In order to protect against the potential that this bill is chaptered after June 30, this bill waives that statutory deadline and various other deadlines and provisions of the Elections Code in order to ensure that this measure appears on the ballot at the November 8, 2016, election.

- 6) **Arguments in Support:** In support of a prior version of this bill, California Common Cause wrote:

In 2014, recognizing the disempowering effects of *Citizens United*, the Legislature placed on the ballot an advisory measure (SB 1272, Lieu) to give voters the chance to exercise their political voice and call for the overturn of this decision. The measure, Proposition 49, was set to be voted on at the November 2014 election, but the vote was temporarily enjoined after a court challenge. Although the California Supreme Court ultimately held there was nothing improper with placing the measure on the ballot, by the time the Court reached its decision, the November 2014 election had passed; the measure was deemed moot, and the people deprived of their opportunity to have their voice heard....

SB 254 gives back to voters their chance to be heard on *Citizens United*. For more than a century, the California Constitution has provided that “the people have the right to instruct their representatives.” In 1891, Californians exercised this right by voting overwhelmingly in favor of amending the U.S. Constitution to provide for the direct election of U.S. Senators.

- 7) **Arguments in Opposition:** In opposition to this bill, the California Taxpayers Association writes:

The California Constitution guarantees that the powers of the initiative and referendum are reserved in the people (California Constitution, Article IV, Section 1). While the Legislature can propose constitutional amendments, the power to legislate and pass laws via initiative or referendum is not vested with the Legislature.

Placing an advisory measure on the ballot—an action not even the people can take—is not a function of the Legislature. The Legislature has the power to engage in lawmaking. This bill does not do that. SB 254 is merely an advisory measure with no legal impact.

The ballot should not be used as a public opinion poll. The power of the ballot should remain in the hands of the people.

- 8) **Related Legislation:** AB 1910 (Harper), places an advisory question relative to transportation funding on the ballot at the November 2016 statewide general election. AB 1910 failed passage on a 5-10 vote in the Assembly Transportation Committee on April 18, 2016, and was granted reconsideration.

- 9) **Bill Calling an Election:** Because this bill calls an election within the meaning of Article IV of the Constitution, it would go into immediate effect if chaptered.

REGISTERED SUPPORT / OPPOSITION:

Support

American Sustainable Business Council
California Clean Money Campaign
California Common Cause (prior version)
California Teachers Association
CALPIRG
Courage Campaign (prior version)
Democracy for America
Free Speech for People
Friends of the Earth U.S.
Move to Amend Coalition
MOVI, Money Out Voters In (prior version)

Opposition

California Taxpayers Association
Howard Jarvis Taxpayers Association

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