

Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1272 (Lieu) – As Amended: May 27, 2014

SENATE VOTE: 23-12

SUBJECT: Campaign finance: advisory election.

SUMMARY: Places an advisory question on the November 4, 2014 statewide general election ballot on amending the United States Constitution to address campaign finance 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 Congress of the United States propose, and the California Legislature ratify, an amendment or 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 the rights protected by the United States Constitution are the rights of natural persons only?

- 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. 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) 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.
- 3) Requires the Secretary of State to communicate the results of the vote on the advisory question to Congress.

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: According to the Senate Appropriations Committee, one time ballot printing/ mailing costs of approximately \$275,000 - \$550,000 depending on the number of pages and based on an estimated cost per page of \$55,000. (General Fund)

The actual costs could be higher or lower depending on the length of the title, summary, text, Legislative Analyst's Office's analysis, proponents' and opponents' arguments, as well as the overall size of the ballot pamphlet. Larger ballots generally result in less printing and mailing costs per page. The average number of pages per measure since 2008 is ten and the minimum per measure has been five pages.

COMMENTS:

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

The United States Constitution and the Bill of Rights explicitly intend to protect the rights of individual human beings as indicated by the phrase “We the people” in the preamble to the Constitution. But in the case of Citizens United v. FEC (2010), corporations have been granted the same rights as people and free speech is now being equated with money, especially as it pertains to political and campaign donations. And in February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the U.S. Supreme Court Citizens United ruling. The most recent Supreme Court ruling is McCutcheon v. FEC which was handed down April 2, 2014 and decided that it is permissible for individuals to make limitless contributions to federal campaign and federal candidate committees.

However, it is important to note that Corporations are not mentioned in the Constitution, nor have The People ever granted Constitutional rights to corporations and money does not equal speech as stated by United States Supreme Court Justice Stevens in the case Nixon v. Shrink Missouri Government PAC (2000) that “money is property, it is not speech.”

Given that 80 percent of Americans oppose the Citizens United ruling and are likely to be equally opposed to the McCutcheon ruling, SB 1272 would advance the efforts to reverse the Supreme Court’s ruling in the Citizens United v. Federal Elections Commission and other applicable judicial precedents, including McCutcheon v. Federal Election Commission.

SB 1272 would add an advisory question to California’s November 4, 2014 [ballot] asking the people: “Shall the Congress of the United States propose, and

the California legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election 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 the rights protected by the United States Constitution are the rights of natural persons only?"

- 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 three other instances in California's history, one or more statewide advisory measures have appeared on the ballot. In November 1892, voters approved an advisory measure that was placed on the ballot by the Legislature asking whether United States Senators should be directly elected by a vote of the people. 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. Finally, 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 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. In light of this fact, the State of California is already on record in support of an amendment to the United States Constitution to overturn Citizens United.
- 5) Arguments in Support: In support of this bill, the California School Employees Association, AFL-CIO, writes:

Recent Supreme Court decisions like that of *Citizens United v. Federal Election Commission* and *McCutcheon v. Federal Election Commission* have highlighted the dangers and inequities of identifying money as political speech. While the Court ruled that money takes the place of political speech for donors decades ago, the original intent came with limits on contribution amounts and rigorous reporting obligations. The notion of money being speech has been perverted into allowing those with more money to speak louder than those without the expendable income. These rules would be the same as suspending Roberts Rules of Order and allowing the person who can yell the loudest to control the meeting.

Asking the California electorate of their opinion on whether or not an amendment to the United States Constitution is required to reverse the Supreme Court decisions that equate money with free speech and grant constitutional rights and protections to incorporated entities, allows for the dialogue for progress to occur. Amending the United States Constitution is a long and arduous task. Taking this initial step will signal to the rest of the country that the debate is ready for legislative halls and not just cable news talk shows.

- 6) Related Legislation: AJR 1 (Gatto), which is pending in the Senate Judiciary Committee, 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 further declares that money does not constitute speech and may be legislatively limited.

SB 1402 (De León), which is pending in the Assembly Rules Committee, places an advisory question on the November 4, 2014 statewide general election ballot asking voters whether Congress should reform the nation's immigration laws.

HR 37 (Wieckowski), which is also being heard in this committee today, states the Assembly's disagreement with the United States Supreme Court's decision in McCutcheon v. Federal Election Commission (2014) No. 12-536, in which the Supreme Court struck down a federal law restricting the aggregate amount that a donor may contribute in total to all federal candidates and committees in an election cycle.

- 7) Previous Legislation: AB 644 (Wieckowski) of 2013, would have required a statewide advisory vote on the November 4, 2014 general election ballot on amending the United States Constitution to address campaign financing issues. AB 644 was set for hearing twice in this committee, but was pulled from the agenda both times at the request of the author.

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, it would go into immediate effect if signed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Money Out, Voters In (sponsor)
American Sustainable Business Council
Beach Cities Democratic Club
California Clean Money Campaign
California Common Cause
California School Employees Association, AFL-CIO
CALPIRG
Democracy for America
Free Speech for People
LAX-Area Democratic Club
Miracle Mile Democratic Club
Rebuild the Dream
Robert F. Kennedy Democratic Club
Sierra County Democratic Central Committee
West LA Democratic Club

Opposition

Department of Finance

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