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CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

AGENDA REPORT

TO: President Reid and Members of the City Council
FROM: Barbara J. Parker, City Attorney
DATE: December 20, 2011

RE: RESOLUTION (1) DECLARING THE CITY OF OAKLAND'S OPPOSITION TO THE UNITED STATES SUPREME COURT'S DECISION IN *CITIZENS UNITED V. FEDERAL ELECTION COMMISSION* WHICH ROLLED BACK RESTRICTIONS ON CORPORATE SPENDING IN THE ELECTORAL PROCESS, RULING THAT CORPORATE CAMPAIGN SPENDING IS CONSTITUTIONALLY PROTECTED SPEECH AND (2) SUPPORTING A CONSTITUTIONAL AMENDMENT TO OVERTURN *CITIZENS UNITED*

SUMMARY

The United States Supreme Court's 2010 decision in *Citizens United v. Federal Elections Commission* ruled that corporations have the right to spend unlimited sums of money in elections.

This proposed resolution would support a Constitutional amendment that would effectively reverse the Supreme Court's decision and direct the City's federal lobbyist to advocate for such legislation.

FISCAL IMPACT

The potential positive fiscal impact of an amendment to the United States Constitution that would overturn *Citizens United* is tremendous. Immense corporate influence at the federal level allows for the enactment of legislation and the repeal of regulations that costs Oaklanders and the City of Oakland millions of dollars. For example, the people of Oakland and the City of Oakland have been wracked by the foreclosure crisis. One of the primary reasons for the crisis was the federal deregulation of the financial industry. Now efforts to reimpose regulation of the financial

industry are stalled in Congress because of the immense political power of financial corporations. *Citizens United* multiplies that power. The foreclosure crisis is one of many examples of how corporate interests have prevailed to the detriment of Oaklanders and reduced vital services that the City of Oakland provides to Oaklanders.

BACKGROUND

In January 2010, the Supreme Court handed down *Citizens United v. the Federal Election Commission*, ___ U.S. ___, 130 S.Ct. 876 (2010). The Supreme Court by a vote of 5-4, decided that corporations have a First Amendment right to spend unlimited (and often unreported) amounts of money to influence the outcome of elections.

In the November 2010 midterm elections, according to a report by Public Citizen, outside groups (i.e. not candidates or political parties) spent 384 percent more money than they spent in the 2006 midterm elections. About half of that money was untraceable, funneled through front groups that were not required to disclose where the money they spent (mostly on negative attack ads) came from.

A constitutional amendment, introduced in both the House of Representatives and the Senate, would overturn *Citizens United*.

KEY ISSUES AND IMPACTS

Free and fair elections are essential to democracy and effective self-governance. In *Citizens United v. the Federal Elections Commission*, the United States Supreme Court rolled back federal restrictions on corporate spending in the electoral process, allowing unlimited corporate spending to influence elections, candidate selection and policy decisions.

The *Citizens United* decision granted corporations unprecedented influence in democratic elections while permitting them to hide their involvement, thereby threatening the voices of the electorate and the foundation of democracy. Moreover, the *Citizens United* decision may supersede state and local efforts to regulate corporate activity in their campaign finance laws. Corporations have used the 'rights' bestowed upon them by the courts to overturn democratically enacted laws that were passed at municipal, state and federal levels to curb corporate abuse. This has impaired the ability of local governments to protect their citizens against corporate harms to the environment, to health, to workers, to independent business, to local and regional economies.

The proposed Constitutional amendment would effectively reverse the Supreme Court's *Citizens United* ruling. The amendment has three main focuses: to authorize

Congress to regulate the raising and spending of money for federal political campaign contributions and expenditures (including independent expenditures), to allow states to regulate raising and spending at their level, and to permit Congress to pass campaign finance reform legislation that could withstand constitutional challenges.

SUSTAINABLE OPPORTUNITIES

Not applicable.

DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.

RECOMMENDATION

Adopt the resolution (1) declaring the City of Oakland's opposition to the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* and (2) supporting a constitutional amendment to overturn *Citizens United*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barbara J. Parker', with a large, stylized circular flourish at the end.

BARBARA J. PARKER
City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

11 DEC -8 PM 4:10

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Council President Larry Reid
And City Attorney Barbara J. Parker

RESOLUTION (1) DECLARING THE CITY OF OAKLAND'S OPPOSITION TO THE UNITED STATES SUPREME COURT'S DECISION IN *CITIZENS UNITED V. FEDERAL ELECTION COMMISSION* WHICH ROLLED BACK RESTRICTIONS ON CORPORATE SPENDING IN THE ELECTORAL PROCESS, RULING THAT CORPORATE CAMPAIGN SPENDING IS CONSTITUTIONALLY PROTECTED SPEECH AND (2) SUPPORTING A CONSTITUTIONAL AMENDMENT TO OVERTURN *CITIZENS UNITED*

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

WHEREAS, in *Citizens United v. the Federal Elections Commission*, the United States Supreme Court rolled back federal restrictions on corporate spending in the electoral process, allowing unlimited corporate spending to influence elections, candidate selection and policy decisions; and

WHEREAS, the *Citizens United* decision granted corporations unprecedented influence in democratic elections while permitting them to hide their involvement, thereby threatening the voices of the electorate and the foundation of democracy; and

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

WHEREAS, corporations have used the "rights" bestowed upon them by the courts to overturn democratically enacted laws that were passed at municipal, state and federal levels to curb corporate abuse, thereby impairing local governments' ability to protect their citizens against corporate harms to the environment, to health, to workers, to independent businesses, to local and regional economies; and

WHEREAS, members of both houses of the United States Congress have introduced proposed amendments to the United States Constitution that would overturn the decision in *Citizens United*, and limit corporate influence over federal, state and local elections; now therefore be it

RESOLVED: that the City of Oakland hereby declares its opposition to the United States Supreme Court's decision in *Citizens United v. the Federal Elections Commission*; and be it

FURTHER RESOLVED: that the City of Oakland calls on Congress to approve an amendment to the United States Constitution that would overturn the decision in *Citizens United* and limit corporate influence over federal, state and local elections; and be it

FURTHER RESOLVED: that the City of Oakland directs its federal lobbyist to advocate for legislation to overturn *Citizens United*; and be it

FURTHER RESOLVED that the City of Oakland calls on other communities and jurisdictions to join in this action by passing similar resolutions.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California