

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: October 28, 2011

TO: Honorable Members of the Intergovernmental Relations Committee

FROM: Gerry F. Miller   
Chief Legislative Analyst

Assignment No. 11-09-0809

SUBJECT: Resolution (Garcetti – Reyes – Krekorian) on Legislating Corporate Personhood

CLA RECOMMENDATION: Adopt Resolution (Garcetti – Reyes – Krekorian) that would include in the City's 2011-12 Federal and State Legislative Programs SUPPORT for legislative actions ensuring that corporations are not entitled to the entirety of protections or "rights" of human beings, specifically so that the expenditure of corporate money to influence the election process is no longer a form of constitutionally protected speech.

## SUMMARY

Resolution (Garcetti – Rosendahl – Krekorian), introduced August 19, 2011, is in support of state and federal legislation that would limit the rights of corporations in regards to using corporate money to fund political speech that would effect the electoral process. The Resolution states that the United States Supreme Court ruling in the *Citizens United v. the Federal Election Commission* case rolled back legal restrictions on corporate spending and threatens the voices of the people in the United States' democracy. The Resolution also refers to a statement from Justice Hugo Black's dissenting opinion in the 1938 Supreme Court case *Connecticut General Life Insurance Company v. Johnson*, in which Black stated "I do not believe the word 'person' in the Fourteenth Amendment includes corporations."

There is no currently pending state or federal legislation that is specifically related to reversing the *Citizens United* decision and limiting the speaking rights of corporations with regards to elections. In June 2010, Congressman Chris Van Hollen (D – Maryland) introduced HR 5175, the DISCLOSE Act, in response to the *Citizens United* decision. The bill would have banned United States corporations controlled by foreign governments from making campaign contributions, prevented Troubled Asset Relieve Program loan recipients from making political contributions, and would have required various disclosure and transparency mechanisms designed to indentify large organizations that were spending on political advertisements. The bill passed the House but failed in the Senate on a 59-39 vote.

## *Discussion*

Resolution (Garcetti – Reyes – Krekorian) specifically calls for legislation that would make "the expenditure of corporate money to influence the election process... no longer a form of constitutionally protected speech." Because the *Citizens United* case explicitly states that it is a violation of the US Constitution's First Amendment to "restrict political speech based on a speaker's corporate identity," and that "political speech of corporations or other associations should [not] be treated differently under the First Amendment simply because such associations

are not natural persons,” any legislative actions aimed at achieving the Resolution’s objectives short of adopting an amendment to the US Constitution are likely to be overturned by the courts if they are challenged. An proposed amendment to the Constitution can be initiated either by a two-thirds majority of both the US Senate and the US House of Representatives, or in a Constitutional Convention called by two-thirds of the States. Once initiated, a proposed amendment must be ratified by three-fourths of the States.

Short of a Constitutional Amendment, the *Citizens United* decision could be reversed by a subsequent Supreme Court decision, though such a reversal may be unlikely without significant changes in the composition of the Court. Since the *Citizens United* decision was issued, Justice Stevens (who dissented in the *Citizens United* decision) has retired and been replaced with Justice Kagan.

While the *Citizens United* decision forbids restrictions on independent expenditures of corporations on political speech, it does allow for disclosure requirements that require corporations spending on political speech to identify that they are funding that speech. Additionally, while independent expenditures are protected under the *Citizens United* decision, direct contributions to the campaigns of those running for office can still be limited. Legislation on disclosure requirements and funding limits could be supported per Resolution (Garcetti – Reyes – Krekorian).

The cities of Richmond and Berkeley have adopted similar Resolutions that call for amending the US Constitution. Adoption of Resolution (Garcetti – Reyes – Krekorian) would be consistent with past City actions, including the establishment of its own local laws governing corporate expenditures in municipal elections that were only recently amended to comply with the *Citizens United* decision.



Charles E. Modica, Jr.

Analyst

Attachments:

- (1) Resolution (Garcetti – Reyes – Krekorian)

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; 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* decision supersedes state and local efforts to regulate corporate activity in their elections;

NOW THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Motion, the City of Los Angeles hereby includes in its 2011-2012 Federal and State Legislative Programs SUPPORT for legislative actions ensuring corporations are not entitled to the entirety of protections or "rights" of human beings, specifically so that the expenditure of corporate money to influence the electoral process is no longer a form of constitutionally protected speech.

PRESENTED BY:



ERIC GARCETTI

Councilmember, 13<sup>th</sup> District



BILL ROSENDAHL

Councilmember, 11<sup>th</sup> District

SECONDED BY:

