



New York City Campaign Finance Board

40 Rector Street, 7th Floor, New York, NY 10006

tel. 212.306.7100 fax 212.306.7143

www.nyccfb.info info@nyccfb.info

**Testimony of Amy Loprest
Executive Director
New York City Campaign Finance Board**

**City Council Committee on Governmental Operations
December 16, 2011**

Good afternoon Chair Brewer, and members of the Governmental Operations Committee. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board. I thank you for the opportunity to appear today in support of this important resolution.

I'll say this as clearly as I can: in a healthy democracy, people—not money—decide elections.

This simple idea is the foundation for New York City's groundbreaking system of public financing for city elections, created more than two decades ago. By providing qualifying candidates with public matching funds, the Campaign Finance Program amplifies the voices of small-dollar contributors. It gives candidates the incentive to spend their campaign time connecting with people, instead of chasing large contributions.

The system is strong because it has adapted and evolved since it was created. The Council has helped to shape the Program over the years by acting to curb the potential for corporate money to distort city elections and erode confidence in the democratic process.

A key provision of the City's campaign finance law prohibits candidates for City office from accepting direct contributions from corporations. The 1998 ban on corporate contributions, which applied only to candidates who participated in the Campaign

Finance Program, was expanded by the Council in 2004 to cover all candidates for City office. In 2007, this Council extended the corporate ban to limited liability companies and partnerships.

It is a long-standing recommendation of the Campaign Finance Board that candidates be allowed to accept contributions only from natural persons, not from organizations, including corporations and other business entities, unions, and political committees. We have renewed this proposal time and again for the simple reason that people—not corporations, unions, or other organizations—should decide elections.

Until recently, the Supreme Court agreed, without reservation, that political activity by corporations is fundamentally different from political activity by people. Federal law has prohibited direct corporate contributions since 1907. In 1990, in *Austin v. Michigan State Chamber of Commerce*, the Court upheld a state law prohibiting the use of corporate treasury funds for independent expenditures.

As Justice Thurgood Marshall wrote in the majority opinion, “Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions.”¹ Subsequent federal legislation, in accordance with the *Austin* decision, built a firewall to keep corporate “soft money” expenditures out of elections for federal office.

All of this was overturned by the Court’s misguided decision in *Citizens United v. FEC*, which broadly invalidated restrictions on election-related spending by corporations. Recognizing a First Amendment right where none had previously been found, *Citizens United* opened the floodgates to allow massive amounts of unlimited—and too often, undisclosed—-independent spending by corporations, unions, and other groups.

The decision left a heavy mark on the 2010 federal midterm elections. Independent expenditures quadrupled from 2006, to more than \$300 million. Nearly half of that total

¹ *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990) at 12.

came from groups who are not required to reveal their donors to the public. The lack of uniform, comprehensive disclosure requirements for election-related spending at the federal level will allow corporate actors to intensify their political activities through the 2012 presidential election, but keep them hidden behind a veil of secrecy.

There is still no guaranteed right to spend anonymously, however. In deciding *Citizens United*, eight of the nine justices affirmed the constitutionality of requirements to disclose independent spending meant to influence elections. Since the decision, 15 states have passed new disclosure laws.

In New York City, voters approved a City Charter amendment in November 2010 that requires disclosure of independent expenditures in city elections. We are nearing the end of the rulemaking process to implement the new requirement. We have received extensive input from the public on the proposed rules, and appreciate the contributions to this discussion made by Speaker Quinn and the Chair of this Committee, Council Member Brewer. We are confident the rules will achieve the goal intended by the Charter: to ensure corporations and other actors who spend money to influence city elections conduct their activities in the open, so New Yorkers can see where the money goes before they decide how to vote.

We thank you again for taking leadership on this issue, and for seeking to lend our city's voice to the growing chorus of those speaking out against the Court's decision in *Citizens United*. I am happy to answer any questions you may have.

-- 30 --

DISTRICT OFFICE
165 PARK ROW, SUITE 11
NEW YORK, NY 10038
(212) 587-3139
FAX: (212) 387-3138

CITY HALL OFFICE
250 BROADWAY, SUITE 1738
NEW YORK, NY 10007
(212) 788-7259
mchin@council.nyc.gov



THE COUNCIL OF
THE CITY OF NEW YORK
MARGARET S. CHIN
COUNCIL MEMBER, 1ST DISTRICT, MANHATTAN

CHAIR
LOWER MANHATTAN REDEVELOPMENT

COMMITTEES
PUBLIC HOUSING
EDUCATION
SMALL BUSINESS
CIVIL RIGHTS
WOMEN'S ISSUES
AGING

Committee on Government Operations

Testimony - Council member Margaret S. Chin

December 16, 2011

Today, I want to voice my support for the resolution we will discuss today, which opposes the United States Supreme Court's interpretation of the Constitution in *Citizens United v. Federal Election Committee*. I also want to voice my support for an amendment to the Constitution to state that corporations are not in fact, people, and thus should not be afforded the same protection with regards to the freedom of speech, as living, breathing Americans. Earlier this year, the Los Angeles City Council was the first city to approve a similar resolution calling on Congress to amend the constitution to clearly establish that only people, not corporations, are endowed with constitution rights. It is my sincere hope that the New York City Council will be the second city in our nation to reaffirm this sentiment.

Citizens United significantly limited legal oversight of corporate spending with regards to the electoral process. The decision affirmed the right of corporations to raise and spend unlimited funds on political campaigns, effectively giving moneyed special interest groups an undue influence in our electoral system. Under the decision, corporations and unions, alike, can spend as much as they want to support candidates they like, or attack candidates they dislike. It is the right of corporations, according to the Court's decision, to speak with their wallets.

This privatization of democracy has already started to irrevocably change elections in our country. The Supreme Court has consistently prevented Congress from enacting laws to restrict campaign donations and spending. Whether it is personal or corporate wealth, the 1 percent in our society speaks louder than the 99 percent of Americans when it comes to elections.

It is time to restore our elections to the voting public. Corporations are a structure which allows people to run and operate a business with the goal of making a profit. As many scholars have noted, the rights and responsibilities of a corporation are distinct from the

people who own or participate in them. In fact, corporations are developed in part to shield an individual's personal liability for its actions. The separation between a corporation and an individual is well enshrined in our legal system, I see no reason it shouldn't also be so with regards to our elections.

I want to thank Speaker Quinn for her leadership on this issue, as well as Council member Brewer, Chair of the Committee on Government Operations, and my colleagues in the Progressive Caucus for introducing this important resolution.

**Testimony Of Susan Lerner
Executive Director, Common Cause/NY
Before the
New York City Council Committee on Government Operations
Supporting
Resolution Opposing U.S. Supreme Court's Interpretation in *Citizens
United*
and Calling for Constitutional Amendment**

December 16, 2011

Good morning Chair Brewer and members of the Committee. Thank you for the opportunity to address you today. Common Cause/NY wants to commend the Committee, Speaker Quinn and the other sponsors of this resolution for addressing this most urgent issue so forcefully.

I am Susan Lerner, Executive Director of Common Cause/New York. Common Cause/New York is a nonpartisan citizens' lobby and a leading force in the battle for honest and accountable government. Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, and not simply the special interests. For more than 30 years, we have worked at both the state and municipal level to bring about honest, open and accountable government. We have been a long-standing advocate for innovative campaign finance and ethics laws in New York, as well as throughout the country. Common Cause is a leading supporter of public funding of elections throughout the country. We have been involved in helping craft, ultimately pass and help implement virtually all of the public funding of election systems that are functioning at the state and national level, as well as numerous municipal level systems, including the highly regarded public funding of elections system in New York City. We have been a leading force in the fight for conventional campaign finance reform measures for decades across the country.

With that long history of support, it is not surprising that we were taken aback by the Supreme Court's decision in *Citizens United* which overturned decades of law and granted corporations the same rights as people when it comes to political spending. This misguided ruling has opened the floodgates for special interest money in our elections. We strongly support amending the U.S. constitution to reverse *Citizens United* and end the false doctrine of corporate personhood.

The *Citizens United* decision enunciates a view of our constitution which frontally attacks hard-won campaign finance reforms and threatens the very concept of government by, of and for the people.

It's all at risk of being swept away. Multi-billion-dollar corporations and unions put around \$300 million into the 2010 midterm Congressional elections, roughly half of it from undisclosed donors. Millions more went into races for governor and state legislatures across the country. And groups like the U.S. Chamber of Commerce are

promising to spend hundreds of millions more in 2012, easily enough to let them drown out the voices of individual Americans.

Every elected official and every aspiring politician who hopes to hold office must now think about the financial impact of his or her position on virtually every issue. A vote cast in support of a big contributor's position may guarantee the official will have more than enough money to ensure reelection; a "wrong" vote may trigger the financing of a crippling campaign of negative ads.

It is hard to imagine how America can face the difficult challenges of the 21st Century – health care, climate change, energy independence, international unrest, and an unsteady economy – and achieve real progress when our elected representatives face such fundraising challenges and are so dependent on financial elites for their political survival.

This is not the system that our Founding Fathers envisioned. Corporations are not mentioned in the Constitution and The People have never granted constitutional rights to corporations. The People have never decreed that corporations have authority that exceeds the authority of "We the People."

The misguided *Citizens United* decision reverses long-standing and well-reasoned precedent. United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations." In *Austin v. Michigan Chamber of Commerce* (1990), the U.S. 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 corporations political ideas." United States Supreme Court Justice Stevens observed in *Nixon v. Shrink Missouri Government PAC* (2000) that "money is property, it is not speech."

Nevertheless, *Citizens United v. the Federal Election Commission* (2010) reversed the decision in *Austin*, and presents a serious threat to self-government by rolling back legal limits on corporate spending in the electoral process allowing unlimited corporate spending to influence elections, candidate selection, policy decisions and sway votes; and,

The opinion of the four dissenting justices in *Citizens United* noted 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 prodigious sums on campaign messages that have little or no correlation with the beliefs held by natural persons.

The vast majority of Americans – irrespective of political persuasion – recognize that corporations simply should not have the same constitutional rights as natural persons. Indeed, a February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the U.S. Supreme Court *Citizens United* ruling. Here in New York City, the feeling of unease which ordinary Americans feel with the unchecked ascendancy of corporations in our political system has found expression in "Occupy Wall Street," an effort which has brought tens of thousands of New Yorkers out into the streets to protest the dominance of corporations in our political system.

It is particularly fitting that New York City should join Los Angeles and Oakland in seeking to correct the Supreme Court's mis-interpretation of the most basic elements of our representative system of government through a constitutional amendment. New York, one of the original 13 colonies, has been a staunch supporter of American democracy since its founding. New Yorkers Alexander Hamilton and John Jay were instrumental in the drafting and passage of the U.S. Constitution in the form that has served our nation for over 200 years. Hamilton and Jay were two of the three authors of *The Federalist Papers*, the seminal writings which helped secure ratification of the U.S. Constitution, and which were published here in New York. Tellingly, corporations are mentioned only four times in *The Federalist Papers* and then only in passing.

Adoption of the proposed resolution will place New York City squarely where it belongs: in the forefront of the quickly growing movement to amend the constitution to protect our democracy from the corrosive impact of unlimited corporate political dollars and unchecked corporate political power.

Common Cause/NY strongly urges the passage of this Resolution. Should Congress fail to act within the next six months, we urge you explore options for presenting an advisory ballot measure to the voters of New York City giving them the opportunity to expressly instruct New York City's congressional delegation to prioritize passage of such an amendment.

Thank you.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: SUSAN KERNER (PLEASE PRINT)

Address: _____

I represent: Common Cause / NY

Address: 74 Trinity Pl, NY, NY 10006

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 12/15/11

Name: Amy Loprest (PLEASE PRINT)

Address: 40 Rector Street

I represent: NYC Campaign Finance Board

Address: 40 Rector St, 7th Floor, NY, NY 10006

Please complete this card and return to the Sergeant-at-Arms