

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2023-006

TO: Mayor Greg Ross
Members of the City Commission

CC: Ryan Eggleston, City Manager
Tedra Allen, City Clerk

FROM: Jacob G. Horowitz, City Attorney *JGH*
Sean M. Swartz, Assistant City Attorney *SMS*

DATE: July 5, 2023

RE: City of Cooper City ("City") – Campaign Finance Law

At the June 13, 2023, regular meeting of the City Commission, the commission directed the City Attorney's Office to research the City's legal authority to regulate campaign finance matters, and to specifically examine whether the City of Miami Beach ordinance regulating campaign finance is legally enforceable.

In 2021, the Florida Legislature adopted Senate Bill 1890, thereby amending Section 106.08(11), Florida Statutes, to expressly **preempt** municipalities from enacting or adopting the following:

- 1) Contribution limits that differ from the limitations under state law,
- 2) Any limitation or restriction involving contributions to a political committee or electioneering communications organization, or
- 3) Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure. All such ordinances either existing or enacted by a municipality are void.

This preemption is consistent with the United State Supreme Court's 2010 seminal opinion in the Citizens United v. Federal Election Commission lawsuit, which held that government **may not**, under the First Amendment to the U.S. Constitution, suppress political speech on the basis of the speaker's corporate identity. Citizens United v. Federal Election Commission, 130 S.Ct. 876 (2010). Specifically, the Court ruled that limiting **independent expenditures** violates the First Amendment right to free speech.

"Independent expenditure" is defined by the Federal Election Commission as an expenditure for a communication, such as an advertisement through a website, digital device, application, advertising platform, newspaper, TV or direct mail that **expressly advocates the election or defeat** of a clearly identified candidate; and **is not made** in consultation or cooperation with, or at the request or suggestion of any candidate, or his or her authorized committees or agents, or a political party committee or its agents. The definition of "independent expenditure" **does not** include a donation to a specific political candidate.

CITY OF MIAMI BEACH ORDINANCE

Under the City of Miami Beach Code of Ordinances, which was included as back-up to the June 13 commission agenda, candidates for office, as well as their campaign committees, **may not** directly solicit, accept, or deposit into such candidate's campaign account any campaign contribution from a **vendor, real estate developer, or their lobbyists**. In addition, vendors, real estate developers, and lobbyists of vendors or real estate developers **may not** directly or indirectly **contribute to the campaign of an incumbent or candidate for Mayor or City Commission**.

While the Miami Beach ordinance does not expressly regulate independent expenditures, it does regulate contributions to candidates' campaign committees. In our opinion, these specific restrictions may run afoul of the legislative preemption set forth in Section 106.08(11), F.S. as well as the Citizens United decision, as cited above. Therefore, we would **advise against** any ordinance that attempts to regulate contributions to political committees or electioneering communication organizations.

The Miami Beach ordinance further provides for fines of up to \$500.00 for violations of their campaign finance regulations, along with certain disqualifications of lobbyists or vendors for a 12-month period. These prohibitions may be waived by 5/7ths vote of the Miami Beach City Commission.

CONCLUSION

After reviewing the applicable statutes and case law, it is our opinion that the City **may prohibit** the solicitation or acceptance of **campaign contributions** by a candidate from City vendors, real estate developers, or their lobbyists. However, the City **may not** legally impose campaign contribution limits which deviate from the requirements of Ch. 106, F.S. nor impose any restrictions on **independent expenditures** or on the solicitation, acceptance, or deposit of contributions to **political committees or electioneering communications organizations**.

To the extent that the City Commission seeks to regulate campaign finance in the City, the focus

City of Cooper City
Memorandum No. 2023-006
July 5, 2023
Page 3

of any potential ordinance should be limited to the solicitation or acceptance to a candidate's campaign account and not on independent expenditures, political committees, or electioneering communications organizations.

Please do not hesitate to contact our firm if you have any questions or if we can provide any additional assistance.

Enclosure
JGH:SMS