

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 11, 2010

8:05 a.m.

**MEMBERS PRESENT**

Representative Bob Lynn, Chair  
Representative Paul Seaton, Vice Chair  
Representative Carl Gatto  
Representative Craig Johnson  
Representative Max Gruenberg  
Representative Pete Petersen

**MEMBERS ABSENT**

Representative Peggy Wilson

**COMMITTEE CALENDAR**

OVERVIEW: DISCUSSION ON POTENTIAL IMPACT OF THE U.S. SUPREME COURT RULING IN THE CITIZEN UNITED CASE REGARDING CAMPAIGN CONTRIBUTIONS

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

JOHN PTASIN, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Presented an overview related to the discussion about the potential impact of the U.S. Supreme Court ruling in Citizens United v. Federal Election Commission ("Citizens United").

THOMAS DOSIK, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Answered a question during the discussion on the potential impact of the U.S. Supreme Court Ruling in the Citizen United case regarding campaign contributions.

HOLLY HILL, Director  
Alaska Public Offices Commission (APOC)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information during the discussion on the potential impact of the U.S. Supreme Court Ruling in the Citizen United case regarding campaign contributions.

ALPHEUS BULLARD, Legislative Council  
Legislative Legal and Research Services  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the overview discussion about the potential impact of the U.S. Supreme Court ruling in Citizens United v. Federal Election Commission ("Citizens United").

CRAIG TILLERY, Deputy Attorney General  
Civil Division  
Office of the Attorney General  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Listened to the concerns of the committee during the overview discussion about the potential impact of the U.S. Supreme Court ruling in Citizens United v. Federal Election Commission ("Citizens United").

#### **ACTION NARRATIVE**

[8:05:44 AM](#)

**CHAIR BOB LYNN** called the House State Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Seaton, Johnson, Petersen, and Lynn were present at the call to order. Representatives Gatto and Gruenberg arrived as the meeting was in progress.

#### **OVERVIEW: DISCUSSION ON POTENTIAL IMPACT OF THE U.S. SUPREME COURT RULING IN THE CITIZEN UNITED CASE REGARDING CAMPAIGN CONTRIBUTIONS**

[8:06:21 AM](#)

CHAIR LYNN announced that the only order of business was the overview discussion on the potential impact of the U.S. Supreme

Court ruling in the Citizen United case regarding campaign contributions.

CHAIR LYNN reviewed that the U.S. Supreme Court issued a ruling on Citizens United v. Federal Election Commission ("Citizens United") regarding free speech, particularly in regard to contributions by corporations in support of or opposition to candidates and propositions. He said the issue affects everyone running for office, from the municipal level to the legislative branch to the administrative branch. He indicated his wish to include, as part of the discussion, how foreigners in multi-national corporations could impact the political process. He expressed concern as to how Alaska can respond to the recent court decision.

[8:10:34 AM](#)

JOHN PTASIN, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Anchorage), Department of Law, presented an overview regarding the potential impact of the U.S. Supreme Court ruling in Citizens United v. Federal Election Commission ("Citizens United"). First he highlighted that which has not changed because of the ruling: corporations and labor unions still may not contribute directly to candidates; disclosure and disclaimer laws were not directly impacted, although disclosure and disclaimer laws in Alaska are in a state of flux since the ruling; individuals still may contribute only \$500 every calendar year to a candidate and \$5,000 to a political party; the ballot measure law was unaffected; and political party limits/contributions to candidate limits were not affected.

[8:12:27 AM](#)

MR. PTASIN said Citizens United was a case about candidate election free speech, which did not directly interpret Alaska law, but implicates the state's laws. He said U.S. Supreme Court Constitutional decisions are the supreme law of the land, and states do not have greater latitude than Congress to abridge the freedom of speech. Mr. Ptasin related that Citizens United not only invalidated a federal independent expenditure law, it also validated disclosure and disclaimer laws. He explained that an expenditure law is separate and distinct from disclosure and disclaimer laws, so if an expenditure is made, there are still Constitutional laws that allow the public to know what is being spent on a speech and what entity is making the speech

when it is being made. The only issue in Citizens United was the independent expenditure of corporations and labor unions.

[8:13:55 AM](#)

MR. PTASIN said the law that was invalidated was a federal law which banned express, corporate, and labor union advocacy for or against a candidate using funds from the corporation's general treasury 30 days before a primary election and 60 days before a general election. The court noted that corporations have certain legal rights, but at the same time, the First Amendment states that Congress shall make no law abridging the freedom of speech. Mr. Ptasin said the amendment does not limit its application to speakers, but also analyzes whether specific expressions are protected by the First Amendment. He said the government cannot restrict political speech based on corporate identity alone; there has to be a compelling government interest to restrict First Amendment speech - particularly political speech.

[8:15:33 AM](#)

MR. PTASIN related that the federal government tried three separate arguments to show compelling government interest, but all three of those arguments failed before the court. The first was the anti-distortion interest, which argued that the wealth that corporations and labor unions can amass pollutes the message of smaller corporations or candidates. Next was the anti-corruption interest, which is the rationale that all the independent expenditures by corporations and labor unions create an actual corruption or the appearance of corruption. Mr. Ptasin said the courts have allowed this rationale to apply to contributions, but an independent expenditure cannot result in quid pro quo corruption. He stated, "When you try to balance that against the potential or appearance of corruption, you have to balance that against free speech, and the court wasn't willing to say that the appearance of corruption by all this independent expenditure is a good enough reason to essentially ban ... political speech." Mr. Ptasin relayed that the third argument was a shareholder protection interest, arguing that shareholders are powerless to stop the message of corporations. The court considered that the internal mechanisms of a corporation could ensure that the smaller shareholder could seek redress for any improper messaging. Without a compelling interest, the federal law was unconstitutional.

[8:18:15 AM](#)

MR. PTASIN said corporations and labor unions are contemplated by Alaska's laws. The only impact on Alaska law is that corporations and labor unions cannot make independent political speech in campaign elections, which relates to AS 15.13.067 and AS 15.13.135. He said the category of expenditures is broad; it involves speech, especially through the definitions of express communications and electioneering communications. He stated, "Those are political speech, and ... I think, under the law, expenditures like that ... are subject to scrutiny after Citizens United." Alaska law, through the definition of expenditure, restricts corporations and labor unions from making independent communication on a political speech.

[8:20:39 AM](#)

MR. PTASIN said disclosure and disclaimer laws were not implicated; corporations and labor unions cannot make expenditures anonymously. He stated, "Before, we just restricted all expenditures, we didn't allow a corporation or labor union to make any expenditure in a candidate election." Mr. Ptasin related that there are certain areas of the law that do not apply to corporations and labor unions. One area is the treasurer law. He explained, "It doesn't apply to corporations in that when a corporation or a labor union wants to make an independent expenditure in a political speech, ... were that to be applied to corporations, they don't have to do that through their treasurer, and there are certain other laws where ... certain entities, like groups, have to make that speech through their treasurer."

[8:22:26 AM](#)

MR. PTASIN, in response to a question from Representative Seaton, said because "we" restricted any expenditure in a candidate election, there was no reason to apply the treasurer requirement on corporations and labor unions for independent speech. In response to Representative Seaton and Chair Lynn, he said he is working on an internal analysis of all the different issues, which he predicted would be completed soon and disseminated to the legislature, the Alaska Public Offices Commission (APOC), and the public.

[8:24:07 AM](#)

REPRESENTATIVE JOHNSON directed attention to page 28 of a handout in the committee packet entitled, "Alaska State Statutes

Campaign Disclosure Law," and noted that under AS 15.13.084 (1)(C)(ii), regarding prohibited expenditures, there is an exemption for an expenditure made for "printed material, other than an advertisement made in a newspaper or other periodical".

MR. PTASIN offered his belief that that pertains to the expenditure of an individual. In response to Representative Johnson, he said the definition of "person" includes labor union and corporation, and it is a separate and distinct definition from "group" and "individual".

REPRESENTATIVE JOHNSON formulated that a business could make an anonymous expenditure on printed material, other than an advertisement made in a newspaper or other periodical.

MR. PTASIN pointed out that subparagraph (A) specifies that the exception pertains to an anonymous expenditure "paid for by an individual acting independently of any group or nongroup entity and independently of any other individual". He clarified that unlike the definition of "person", "individual" means a human being.

REPRESENTATIVE JOHNSON concluded, then, that that means a corporation, labor union, or political action committee (PAC) could not make an anonymous flier without a disclaimer under this statute.

MR. PTASIN answered that is correct.

[8:26:50 AM](#)

REPRESENTATIVE PETERSEN asked Mr. Ptasin to confirm that an individual could print fliers supporting an initiative or candidate and distribute the fliers door to door, and that individual would have no disclaimer responsibility.

MR. PTASIN answered, "Under this very distinct set of circumstances, yes."

[8:28:10 AM](#)

MR. PTASIN, in response to Representative Seaton, offered the following definitions: entity - a candidate or individual, which is a natural person; person - a catch-all for corporations, labor unions, and business entities; non-group entity - a business that is run for the principle purpose of political speech; and group - two individuals joining together

for the principle purpose of influencing an election. He said the internal analysis being done is trying to establish what Citizens United does to persons under AS 15.13.

REPRESENTATIVE SEATON concluded that under the aforementioned statute, "person" not only includes a labor union and corporation but excludes "individual" and "natural person".

MR. PTASIN answered that is correct.

[REPRESENTATIVE GRUENBERG shook his head.]

REPRESENTATIVE JOHNSON opined that that is not entirely correct. He offered his understanding that "natural person" means "person", which is basically the same as a corporation.

MR. PTASIN responded that "individual" is a "natural person". He reiterated that "person" is defined as including labor unions, non-group entities, groups, and corporations. He said, "They have separate and distinct meanings throughout the statute."

REPRESENTATIVE SEATON asked Mr. Ptasin to confirm whether or not he is saying that in APOC statutes, "person" excludes "individual" and "natural person".

MR. PTASIN said he is almost certain that is correct, but deferred to Mr. Dosik for confirmation.

[8:31:17 AM](#)

THOMAS DOSIK, Assistant Attorney General, Labor and State Affairs Section, Civil Division - Anchorage, Department of Law, related that under statutes related to APOC, "person" is a broader than "individual", because in addition to including an individual, it also includes corporations, labor unions, trusts, and "pretty much any other recognizable entity or organization."

[8:32:06 AM](#)

MR. PTASIN said when a disclaimer and disclosure law refers to "persons", it is referring to corporations and labor unions. He related that AS 15.13.084 establishes that corporations and labor unions cannot make their political speech anonymously. Under AS 15.13.040(d) and (e), he said, the corporation and labor union does have certain disclosure requirements. For example, if the corporation makes independent political speech,

it must report that independent expenditure within 10 days of making it.

[8:33:54 AM](#)

CHAIR LYNN told Mr. Ptasin that at some point, he would like more information regarding foreigners in multi-national corporations who have the influence over whether or not to make independent expenditures.

[8:34:12 AM](#)

MR. PTASIN, in response to Representative Johnson, stated that through the expenditure definition, political speech includes express communications and electioneering communications. He said, "It has to be a yea or nay on a vote, and if there's no election, can't really fall under the expenditure law."

REPRESENTATIVE JOHNSON asked, "What if there's a piece of legislation before the legislature that they express a yea or nay vote to?"

CHAIR LYNN remarked that the legislature votes all the time, for example, in committees and on the House floor. Furthermore, he noted, legislators vote for candidates.

MR. PTASIN responded, "Certainly, and under express communication, that involves a yes or no vote on a specific candidate. Again, the ruling only invalidated independent expenditures on candidate election."

[8:35:49 AM](#)

REPRESENTATIVE GATTO noted that Boeing has a company in Washington that is almost exclusively union, while Boeing's company in South Carolina is exclusively non-union. He asked if a union can claim to be the corporation, if most of the workers are in the union.

[8:36:45 AM](#)

MR. PTASIN responded that the decision applies equally to labor unions and corporations. He said that at least in a federal election now, Boeing can make a speech through its own treasury, the labor union can make that speech through its own treasury, and the disclaimer and disclosure laws "follow." He clarified, "The labor union has the same right after Citizens United."

[8:37:30 AM](#)

REPRESENTATIVE GATTO said some television commercials appear to speak as the voice of the workers, advertising that the company is good. He asked if the people of that company can speak in support of a candidate.

MR. PTASIN answered that the distinction is whether it is the labor union making the speech or a group of employees. If the latter, they are a group. If it is the labor union from its own organization making the speech, the [independent expenditure] is from the labor union's own treasury. In response to a follow-up question from Representative Gatto, he said the distinction between a group of employees in a labor union and the labor union itself is a fine one. He explained that the group of employees has to disclose and report as a group. Hypothetically, he said it would be possible to tell by looking at the APOC report that "this is not the labor union ..., this is a separate group."

[8:39:02 AM](#)

REPRESENTATIVE JOHNSON opined that therein lies the difficulty, because society is somewhat dependent on the disclaimer appearing at the bottom of an advertisement, and that disclaimer can be misleading. For example, he said the advertisement could just say, "Paid for by Boeing."

[8:39:47 AM](#)

MR. PTASIN stated that under AS 15.13.084, an expenditure cannot be anonymous. The meaning of not being anonymous is an issue worthy of scrutiny. He said, "What we want them to disclose and what we want in the disclaimers is a new terrain for us after Citizens United."

REPRESENTATIVE JOHNSON remarked that a name can be anything, and therefore is not necessarily representative of the holder of that name's position on an issue. He asked for clarification regarding how Alaska's law will need to change.

MR. PTASIN responded, "It doesn't change the law with respect to groups." Groups currently report the expenditures made and contributions received. Independent expenditures are different, he said. If corporations and labor unions were entitled to make

corporate speech in Alaska, they would report that expenditure within 10 days.

[8:42:16 AM](#)

REPRESENTATIVE GRUENBERG directed attention to AS 15.13.084(2), which states that a person may not make an expenditure "using a fictitious name or using the name of another." He said he cannot find any definition of "fictitious name", and he asked if regulations define that or if there is precedent in the agency itself that defines that. If not, he asked what the genesis of the legislative history is regarding what was intended by that term.

[8:43:15 AM](#)

MR. PTASIN responded that he does not know.

[8:44:00 AM](#)

HOLLY HILL, Director, Alaska Public Offices Commission (APOC), reported that there is a case currently before the commission which APOC is not at liberty to discuss. In response to Representative Gruenberg, she confirmed that the issue regarding a fictitious name is part of the case. In response to a follow-up request, she provided the following: [the APOC complaint number] 09-01-CD and [the Office of Administrative Hearings (OAH) case number] APO-0231.

[8:45:20 AM](#)

MR. DOSIK, in response to Chair Lynn, said APOC will probably have a decision regarding this case within several months.

[8:46:45 AM](#)

MR. PTASIN, in response to Representative Gruenberg, stated:

Through Citizens United we're only dealing with independent corporation speech, we're only dealing with independent labor union speech. [AS 15.13.084] prohibits those entities from speaking anonymously in that context. ... There's a separate contribution law that says individuals ... who are entitled to make contributions can't make that contribution in the name of another.

REPRESENTATIVE GRUENBERG proffered that a contribution is money to support somebody's campaign, while an expenditure is for a political purpose, but not to support somebody's campaign.

MR. PTASIN confirmed that is accurate.

[8:48:05 AM](#)

CHAIR LYNN asked about an expenditure to put on television advertisements in opposition to or support of somebody's campaign.

MR. PTASIN questioned if Chair Lynn was trying to understand whether there is a law under which "you can't make independent expenditures in the name of another." He said the problem is that AS 15.13.084 applies to expenditures and separate laws state that contributions cannot be made in the name of another.

[8:48:49 AM](#)

REPRESENTATIVE SEATON said he thinks the dilemma is that AS 15.13.084 is made moot because of the aforementioned U.S. Supreme Court ruling, and the committee is trying to figure out which disclosures and reports, for example, it should prevent in this new arena that were previously prohibited in Alaska. He said the committee should keep in mind that expenditures that are coordinated with a campaign no longer fall under the definition of independent expenditure. He said the Alaska law regarding campaign contributions was not overturned by Citizens United.

REPRESENTATIVE SEATON, in response to Chair Lynn, clarified that a corporation or labor union, under Citizens United, could put out an advertisement in support of a candidate similar to an advertisement that the candidate put out him/herself, "but they wouldn't be able to get your graphics from you, because then there would be a coordination between your campaign."

CHAIR LYNN suggested all the corporation or labor union would have to do is scan the original graphics.

REPRESENTATIVE SEATON responded that that is why it will be interesting for the committee to craft laws that can be controlled.

[8:51:34 AM](#)

REPRESENTATIVE GRUENBERG said he thinks confusion results from the definition of "contribution" and "expenditure", which can be found on pages 49 and 50, respectively, of the aforementioned handout. He cited AS 15.13.400(4)(A), which read as follows:

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

REPRESENTATIVE GRUENBERG cited AS 15.13.400(4)(A)(i), which read as follows:

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

REPRESENTATIVE GRUENBERG then noted that sub-subparagraph (iv) read as follows:

(iv) influencing the outcome of a ballot proposition or question;

REPRESENTATIVE GRUENBERG said, "These seem to me to be nearly identical," and he asked what the difference is.

MR. PTASIN responded that coordinated expenditures can also be contributions.

REPRESENTATIVE GRUENBERG asked, "So, it's a subset?"

MR. PTASIN answered no. He cautioned that it is necessary to be careful when dealing with this area of law. He stated his belief that there are times when an expenditure can also be a

contribution. He said corporations and labor unions making independent expenditure have to be wary of where the line has been drawn, particularly after Citizens United, where "the only implication to our law is an independent expenditure that has no ... connection to contribution, it has no connection to a coordinated expenditure." He clarified, "The only thing implicated is an independent expenditure made from a corporate treasury where there is no coordination with a candidate. So, by its nature it can't be anywhere near a coordinated expenditure; it can't be ... anywhere near a contribution."

CHAIR LYNN said the goal in all this is to derive some statute on which everyone can rely.

[8:55:16 AM](#)

REPRESENTATIVE GRUENBERG remarked that this seems to be an area of law that has had add-ons and agency decisions that have affected it, and he suggested that the legislature should be looking to clarify the language.

CHAIR LYNN asked Mr. Ptasin if the administration is working on legislation to clarify this language or if he would like the legislature to work on such language.

[8:56:45 AM](#)

MR. PTASIN responded that as an attorney with the Department of Law, it is his job to alert policy makers of "the changing landscape of what's going on after Citizens United." He reiterated that he is working on internal analysis, and when that analysis is presented, the policy makers can decide whether changes are needed.

CHAIR LYNN indicated the need for someone to "straighten out this mess."

[8:57:36 AM](#)

REPRESENTATIVE JOHNSON directed attention back to page 28 of the handout, to the issue of using the name of another. He asked if there is an active definition of the "name of another" that is clear enough.

[8:58:46 AM](#)

MR. PTASIN answered as follows:

From an enforcement perspective, if there were a case where corporate treasury funds were being used to fund a commercial, and they ... told us that it was from just the CEO, ... that would be a fictitious name, that would be using the name of another, because what you've done is you've used corporate treasury funds. ... Essentially, from an enforcement standpoint, you would have a case to be brought before that corporation - potentially that individual as well.

MR. PTASIN concurred that figuring out if these areas can be defined further merits scrutiny.

REPRESENTATIVE JOHNSON questioned whether the treasurer could pay for the name without identifying the CEO. He suggested the need to redefine the meaning of "name".

[REPRESENTATIVE GRUENBERG nodded.]

MR. PTASIN said the issue that is being contemplated is the creation of a broader or better disclaimer, which is a discussion that various states are having now.

REPRESENTATIVE JOHNSON questioned whether there is a current definition of "the name of another" and "fictitious name" that would work "in the situations that we've just discussed."

[9:00:40 AM](#)

MS. HILL said APOC has a regulation regarding contributions and using the name of another: 2 AAC 50.258. She suggested that some of the language in that regulation may be appropriate for statutory or regulatory purposes.

[9:01:13 AM](#)

CHAIR LYNN asked if Alaska can make expenditure and disclosure/disclaimer laws governing a multi-national board of directors.

MR. PTASIN answered, "With respect to expenditure, Citizens United didn't directly take up that issue." He said federal law 441 E prohibits foreign nationals from spending funds in connection with both federal and state elections.

CHAIR LYNN said he knows that a foreign national, while not being allowed to give so much as a penny to a [U.S.] political contribution, can be a voice in independent expenditure for or against "somebody."

MR. PTASIN reiterated that the under Citizens United, the federal election campaign Act law that prohibits "purely" foreign national corporations from speaking in state elections is still valid.

CHAIR LYNN clarified he does not mean "purely," but means those boards comprised of some U.S. Citizens and some foreign nationals.

MR PTASIN said the distinction is that a foreign national board member cannot coordinate to make independent speech.

CHAIR LYNN said, "But they can vote, if that's what they do, to make this expenditure."

MR. PTASIN explained that federal law allows a U.S. subsidiary to "speak from its own treasury funds" - there cannot be any coordination from a foreign national.

[9:03:20 AM](#)

REPRESENTATIVE GRUENBERG said the only definition he has found for "corporation" is in corporate code, AS 10.50.990(3), which read as follows:

(3) "corporation" means a corporation organized under the laws of this or another state, or of this or another country;

REPRESENTATIVE GRUENBERG said the committee has the applicable statutes at hand, but needs the related regulations. He said he thinks the concept of Citizens United deals with whether [a corporation] can be prohibited from making an independent expenditure "to discuss a candidate or to discuss an issue independent of a campaign"; however, Citizens United does not deal with the next question, which is what kind of regulations will be permissible "within that general parameter." He said it would helpful to know the limits of the U.S. Supreme Court decision and the unresolved issues that may allow the legislature to further legislate.

MR. PTASIN responded that Representative Gruenberg accurately "characterized the landscape of where we are."

[9:05:52 AM](#)

REPRESENTATIVE SEATON offered his understanding that the committee has been told that Citizens United did not impact disclosure laws and reporting requirements, but did impact speech. He offered his understanding that foreign corporations - for example, BP - would not be able to make an independent expenditure. However, BP Alaska - a subsidiary of BP, formed within the U.S. - could. He asked Mr. Ptasin if that is correct.

MR. PTASIN responded yes. He said U.S. subsidiaries are "allowed to speak from profits made in the U.S." The foreign parent cannot coordinate that message with the subsidiary.

REPRESENTATIVE SEATON asked if the only restriction is that the profits must be made in the U.S.

MR. PTASIN stated that the important distinction is that under federal law, there cannot be any assistance from the parent corporation.

[9:07:53 AM](#)

REPRESENTATIVE SEATON asked if Alaska has the option to [enact law] more restrictive than the federal law.

MR. PTASIN replied that after Citizens United, the domestic corporation has a First Amendment right to make independent expenditures.

[9:08:50 AM](#)

REPRESENTATIVE JOHNSON said there are other regulatory bodies that may be affected. For example, the Federal Communications Commission has its own set of rules and has to "treat everyone equally." He questioned whether the effects of Citizens United will still allow the commission to continue applying their restrictions. He questioned how far the effects of the U.S. Supreme Court ruling would reach.

[9:09:43 AM](#)

MR. PTASIN responded that he does not know FCC law, but if there is such a law wherein the FCC has any restriction on the ability of a corporation or labor union to make political speech, that law was not challenged in Citizens United.

REPRESENTATIVE JOHNSON asked how far the legislature needs to go in its consideration of this issue.

MR. PTASIN reiterated that disclaimer and disclosure laws are [still] valid. He mentioned Buckley v. Valeo. He relayed that because speech rights exist, a law limiting the amount of speech that a corporation or labor union can purchase is subject to scrutiny. He stated, "The court took a very dim view of trying to, in part, equalize speech, in Citizens United, referring back to Buckley v. Valeo."

[9:12:34 AM](#)

MR. PTASIN, in response to Representative Gruenberg, said he is not aware of any other cases before any appellate court that are raising any subsidiary issues.

REPRESENTATIVE GRUENBERG said he thinks it will be important for the legislature to be kept informed of any related cases that come before the courts.

[9:14:03 AM](#)

MR. PTASIN, in response to Representative Johnson, reiterated that he has been advised to create the analysis to illustrate for policy makers what the issues are. He said he cannot speak to the next step. In response to a question from Chair Lynn, he reiterated that he represents APOC and is an advisor to the Office of the Attorney General.

[9:16:00 AM](#)

ALPHEUS BULLARD, Legislative Council, Legislative Legal and Research Services, said this is a dynamic area of law that would be difficult to simplify in Alaska Statutes, and, in some ways, the Citizens United case has made it more complicated. He said, "In this case, not speaking to contributions and only to independent expenditures, we have yet another sort of special area of campaign finance law, where we have to come up with new disclosure and disclaimer requirements." He said it would nice to simplify Title 15, but he does not know "if this case presents that opportunity."

MR. BULLARD addressed previously asked questions. Regarding the discussion of AS 15.13.084, using a fictitious name or the name of another, he noted that under 15.13.040(p), the true source of some contributions must be disclosed. He said this is "a little more on point than using a fictitious name or name of another." He said it is possible with disclosure and disclaimer requirements to require an entity or corporation to disclose its top contributors to "break through this veil of a name." He suggested that the committee might consider some legislation in that area.

[9:18:24 AM](#)

MR. BULLARD addressed the previous discussion regarding the manipulation of media air time. He said the analysis of Citizens United talks about a pre-marketplace of ideas and contemplates that there is unlimited amounts of media. He stated, "And so, it seems difficult - if money is speech, and we have said that we can't suppress speech based on the speaker's corporate form - to regulate in that area about how much air time someone could receive. I don't know what efforts in that area would look like, but they would be difficult, given the holding of this case."

MR. BULLARD related that disclosure time tables for persons currently are not the same as the disclosure for the schedules that are required for candidate contributions. He suggested, "Since most corporations, unless they were non-group entities, weren't exposed to our disclosure rules before - they're much different - you might think about bringing those in line if that is amenable to your policy objectives. ... There's nothing that prevents us from doing that."

[9:19:46 AM](#)

MR. BULLARD, in response to Representative Seaton, said so far, all of Alaska's disclosure rules and regulations laws have been upheld, but there could be a point where so much would be required that it would be considered a bar to free speech. He said he does not know if the arguments made regarding the onerous quality of having to report electronically in "real time" would apply to larger entities, corporations, and non-profits, thus it is conceivable that the legislature could require real-time electronic recording to APOC.

[9:21:05 AM](#)

REPRESENTATIVE JOHNSON said currently the contribution, "who you are," and "the principle of the treasurer" has to be reported, while the "the contributions can be anonymous in some areas." That does not apply with respect to candidates. He offered his understanding that Mr. Bullard had said that it would be a policy call to "bring those in alignment." He said the legislature has heard from some organized groups that say they do not want their membership to be made public. He asked, "So, at what point does our constitutional right to privacy overlap with our desire to know who's influencing our public policy, if at all?"

[9:22:14 AM](#)

MR. BULLARD answered that at one end of the spectrum is requiring an entity to reveal its five largest contributors, while the other end of the spectrum is [requiring disclosure information regarding] the anonymous contributor of \$5 who has bought a raffle ticket. He said the answer to Representative Johnson's question is: "somewhere between those two."

[9:23:30 AM](#)

REPRESENTATIVE GRUENBERG said he wonders what actions are being taken by attorneys general and legislators in other states in the wake of Citizens United.

[9:24:31 AM](#)

MR. BULLARD responded that in general terms, he is aware of some efforts on the federal level in U.S. Congress that relate to the Citizens United ruling, including: strengthening disclosure requirements; working to have transparency in trade association; revisiting the tax status of certain non-profits and corporations to engage in political activity; dealing with foreign sources of funding; and broadening the definition of coordination. Regarding foreign sources of funding, he said it is possible to have an American corporation or subsidiary that has majority foreign ownership, where the shareholders themselves are foreign nationals, and it is not fair that those would be covered by 2 USC 441 E. Regarding coordination, he related that AS 15.13.400(e) addresses independent expenditures, and he suggested that the legislature could examine what coordination in this context would be.

CHAIR LYNN requested that Mr. Bullard put in writing the points he just made.

[9:26:30 AM](#)

REPRESENTATIVE GRUENBERG expressed his interest in hearing any information from Mr. Bullard and the Department of Law regarding coordination and independent expenditures. He then asked for confirmation that independent expenditures for free speech are or should be deductible as business expenditures.

MR. BULLARD responded that he is not familiar with these efforts. Notwithstanding that, he cautioned, "If it's going to ... suppress speech, we've just moved the First Amendment issue elsewhere and turned it into sort of a prior restraint." He said there are limits on what can be done in that area.

REPRESENTATIVE GRUENBERG asked, "Is that not trumped by the sovereign's power to tax and to determine what the deductibility of certain expenditures ... [is]?"

MR. BULLARD replied that currently he has no answer for that question.

[9:28:19 AM](#)

REPRESENTATIVE PETERSEN asked if, in the future, it would be possible for a corporation or labor union to file a case, get an injunction, and stop a law put into place by the State of Alaska, if it thinks the law is too cumbersome and infringes upon its right to free speech.

MR. BULLARD said the answer depends upon the specifics of the case and the ruling of the court. He said the corporation or labor union certainly could seek injunctive and "claritory" relief, but it may or may not be granted.

[9:29:21 AM](#)

REPRESENTATIVE SEATON questioned if by allowing political speech to be tax deductible to corporations, the state would be financing that speech, even though the state does not finance speech for individuals. He suggested that the state could require the corporation or labor union that wishes to exercise political speech to pay for it itself.

MR. BULLARD said Representative Seaton made a good legal argument, and he said he does not know the answer.

REPRESENTATIVE SEATON said he would like a follow-up legal opinion on the matter.

[9:30:51 AM](#)

REPRESENTATIVE GATTO questioned if ultimately Alaska should just have state sponsorship of campaigns.

MR. BULLARD answered that that is a political question.

[9:31:30 AM](#)

REPRESENTATIVE GRUENBERG offered his understanding that currently in the House Resources Standing Committee, there are several bills addressing the tax policy related to the oil and gas industry. He asked if an amendment addressing the subject of taxability and deductibility would fall within the subject matter of those bills.

CHAIR LYNN said he thinks Representative Gruenberg is "venturing far."

REPRESENTATIVE JOHNSON proffered that allowable deductions provided under Alaska's Clear & Equitable Share (ACES) prohibit marketing and "that kind of stuff" from being deducted. He stated his assumption that advocating for something via television would be considered marketing.

[9:32:37 AM](#)

CRAIG TILLERY, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law, said he knows that this is an area of great concern to the legislature, but relayed that he is not an expert in this area. He said his purpose is to get a sense of what the legislature needs from the department and what the department will be able to do for the legislature.

[9:33:17 AM](#)

CHAIR LYNN said he would like advice as to what the committee can do about this issue during the interim. Furthermore, he inquired as to whether new legislation is required in order for everyone involved to "keep on the correct side of the law."

MR. TILLERY responded that nothing is required in the sense that "this could be worked out through litigation." He said that is not an efficient way to proceed. He said there are aspects of Alaska's laws that are impacted by the decision, and the more clarification citizens get the better. In response to Chair Lynn, he said he thinks it is correct that some form of clarification - whether through legislation, regulation, or guidance - will likely help to avoid litigation. He related having heard that some members of the public have suggested that they would be "litigating the effect of this case on our laws."

[9:36:22 AM](#)

MR. TILLERY, in response to Chair Lynn, said the department does not have any recommendations for the legislature now, but is in the process of finalizing an analysis to identify the direct and indirect impacts of Citizens United. That analysis will allow policy makers to decide what, if anything they want to do about it, at which point the department's role would be to assist the policy makers in how to carry out the desired course of action. In response to a follow-up question, he said the department hopes to have "some final analysis" completed within the next week. He reminded the committee that the department is working to apply a complex decision to complex laws.

[9:38:31 AM](#)

CHAIR LYNN, in response to Representative Petersen, said any legislation that would be brought forward would probably be presented as a committee bill; therefore, the deadline for personal bills would not apply.

[9:39:01 AM](#)

REPRESENTATIVE JOHNSON said he applauds Chair Lynn for hearing this issue.

CHAIR LYNN opined that all those involved want to do what is right, but need to know what the rules of the game are.

[9:40:24 AM](#)

MR. TILLERY clarified that the department is not trying to be coy; it just needs to handle this issue with care.

[9:40:38 AM](#)

REPRESENTATIVE SEATON said he would like the attorney general's opinion on where "sidebars" would be regarding the following issues that have been discussed: having a short timeframe for disclosure of expenditures; having "true ... expenditures"; and the tax deductibility of independent expenditures. He said he would also like to know if any of the definitions under corporate law could address any of the potential problems perceived on the horizon in the area of independent expenditures.

CHAIR LYNN stated his preference for the governor and attorney general to take the lead on this issue and leave Legislative Legal and Research Services to tackle other legislation. He added his assurance that the legislature would proceed with [related legislation referred by the governor] in a rapid fashion.

[9:44:06 AM](#)

REPRESENTATIVE SEATON asked if there was any restriction in the Citizens United ruling regarding time periods or if it covered the entire political process.

MR. TILLERY deferred to Mr. Ptasin.

[9:45:01 AM](#)

MR. PTASIN stated:

They've afforded the First Amendment speech right to corporations to make independent expenditures, and labor unions, as well. [In] the specific federal law ... there were these little window periods, and ... even inside those window periods, the corporations and labor unions could form a [political action committee (PAC)] and speak inside those little windows of time, but that still wasn't good enough, there still wasn't a compelling government interest to curtail First Amendment speech leading up to these primary and general elections.

Nothing from the analysis, in my view, if you take it back and say, "Well, what if we change that window of opportunity," again, there's nothing in my view that ... would lead me to think that there's some way to outright ban that independent expenditure if it's political speech.

MR. PTASIN, in response to a follow-up question from Representative Seaton, said given that it was the rationale for the anti-distortion compelling government interest that all of the messaging 30-60 days before elections is diluting the message of others and creating a problem in the political marketplace, trying to "back up the window" results in the same problem: taking speech out of the political marketplace. Mr. Ptasin said he thinks that after Citizens United, the court would take a dim view of "any kind of attempt to take that away."

[9:47:20 AM](#)

REPRESENTATIVE GATTO asked if it would be within the bounds of the U.S. Supreme Court ruling and the State of Alaska's laws if corporations and unions were allowed to make contributions, but when they did they would have to contribute equal time and money to the person that they opposed. He said he is talking about expenditure, and he explained that he is trying to neutralize the effect of the U. S. Supreme Court ruling.

MR. PTASIN said he thinks that gets into some of the issues that Mr. Bullard presented regarding prior restraint. He stated, "Now that this speech is protected, you have to be careful, but I couldn't comment right off whether that exact scenario would be constitutional or unconstitutional; we'd really have to give it some real thought." In response to Representative Gatto, he explained that he avoids giving an opinion when asked if something would be constitutional, because any opinion he gives would not be "anywhere near exact enough."

CHAIR LYNN reiterated his preference for the governor to take the lead on this issue.

[9:49:36 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[9:49:49 AM](#)

REPRESENTATIVE PETERSEN commented that the U.S. Supreme Court ruling could have lasting implications. For example, it might dampen the interest of the average citizen who may feel that now that corporations have a more or less unlimited ability for speech made through advertising, the individual's voice is too

small to matter. He said there is already a segment of society that feels that way, and this may compound that view. Likewise, he said this may affect the number of people who want to run for office. He opined that it would be good if the legislature could find a way to keep some of Alaska's current disclaimer and disclosure laws effective in order to "keep the playing field reasonably level."

[9:52:14 AM](#)

REPRESENTATIVE GRUENBERG said he is interested in the issue of tax deductibility and will be looking to see if all of the potential expenditures fall under the prohibition against using the deductions for marketing. He said he would be contacting legal council regarding that matter.

[9:52:49 AM](#)

REPRESENTATIVE JOHNSON said he appreciates the chair's desire to have the governor address this issue, but pointed out that the House State Affairs Standing Committee is the policy body. He suggested that the chair draft a letter to the governor requesting that something be done, and take charge if the Office of the Governor does not.

CHAIR LYNN responded that he would draft a letter and show it to committee members for their feedback.

REPRESENTATIVE GRUENBERG said that would be great.

REPRESENTATIVE GATTO stated his belief that even though there may be difficulties that result from it, the U.S. Supreme Court's ruling was the right decision, because it supports freedom. He expressed a desire to ensure that [corporations and labor unions] have the freedom of speech while not having a "spectacular influence on elections."

[9:56:56 AM](#)

REPRESENTATIVE JOHNSON concurred with Representative Gatto. He clarified that his intent is not to fight the U.S. Supreme Court ruling, but to figure out who will take the lead on conforming Alaska Statutes when necessary.

[9:57:35 AM](#)

REPRESENTATIVE SEATON expressed concern that corporations may have more rights and protections than individuals "expressing speech in these expenditures." He offered his understanding that the purpose of a corporation is to offer liability protection for the stockholders "and others." He said he would like to see if a change in liability protection for liable and slander for corporations in execution of independent expenditures is needed so that that protection mirrors that of an individual. He offered an example.

[10:00:19 AM](#)

CHAIR LYNN stated that the bottom line is figuring out what is best for Alaska.

[10:01:05 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:01 a.m.