

**SB**

**284**

<target><bill>SB 284</bill><subject>SB  
284</subject><comm>HFIN26</comm></target>

# Alaska State Legislature

Senator Hollis French, Chair  
State Capitol, Room 417  
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Committee Members:  
Senator Bill Wielechowski  
Senator Dennis Egan  
Senator Lesil McGuire  
Senator John Coghill

## Senate Judiciary Committee

### Sponsor Statement: Senate Bill 284 Campaign Expenditures

In the wake of the recent U.S. Supreme Court ruling, *Citizens United v. Federal Election Commission*, the Senate Judiciary Committee has worked to determine the changes to Alaska's elections laws that will be needed. Corporations and labor unions have been banned from participating in Alaska's elections prior to this ruling. This means many of Alaska's laws regarding disclosure and disclaimers simply do not apply to corporations and labor unions making independent expenditures to support or oppose specific candidates in elections.

Testimony from Legislative Legal Services attorneys and from the Alaska Department of Law indicated that changes would be needed to Alaska's campaign laws, and this bill was subsequently drafted to address the concerns raised by the attorneys and by committee members.

Senate Bill 284 amends state election laws to clarify that corporations and labor unions are covered by all applicable reporting requirements. It expands communication identification requirements to ensure accurate reporting of top contributors, to require the approval of the content by the principal officer of the corporation or union, and to require statements in each communication that its content has not been authorized or approved by the candidate. It also speeds reporting requirements for communications expenditures in the last nine days of the election so that expenditures over \$250 must be reported within 24 hours.

Recent opinion surveys show broad disapproval by Americans across party lines for the decision reached by the U.S. Supreme Court. In order to retain Alaskans' trust in our system it is vital that legislation be passed this year to ensure that corporations and labor unions spending money to influence elections are at least required to disclose it in a timely fashion. I urge you to support Senate Bill 284.

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## Senate Judiciary Committee

### HCS for CSSB 284(JUD) Campaign Expenditures Sectional Analysis

**Section 1.** Amends language relating to the applicability of AS 15.13 (state election campaigns) to clarify that the chapter applies to all contributions, expenditures, and communications made for the purpose of influencing the outcome of an election covered by the chapter.

**Section 2.** Amends language relating to the duties of the Alaska Public Offices Commission (APOC) to clarify that the commission will assist all persons to comply with the requirements of AS 15.13.

**Section 3.** Amends AS 15.13.040(d) to clarify that every person making an independent expenditure must make a full report of expenditures and contributions received to the commission unless the person is exempted from reporting by another provision of the chapter.

**Section 4.** Adds new requirements to the expenditure report required under AS 15.13.040(d) and specifies that the report must be filed in accordance with AS 15.13.110(g).

**Section 5.** Amends language in AS 15.13.040(h) to clarify that the reporting requirements of AS 15.13.040(d) do not apply to an expenditure made by certain individuals acting independently of any other person.

**Section 6.** Amends AS 15.13.040(p) to clarify that a person who is required to disclose contributions received by that person in an expenditure report under AS 15.13.040(d) must report the true source of the contributions as the "contributor."

**Section 7.** Defines "director" and "officer" for the purposes of AS 15.13.040(e), as that subsection is amended by the bill.

**Section 8.** Requires each person other than an individual, candidate, or nongroup entity with an annual operating budget of \$250 or less, to establish an account from which all funds, used by the person to make independent expenditures, must be drawn. Requires the person to (1) make records relating to the account available to APOC and (2) preserve all records relating to the account for a period of six years.

**Section 9.** Amends AS 15.13.067 to clarify who may make an expenditure that is not an independent expenditure, in a state election for public office.

**Section 10.** Prohibits a foreign national from making a contribution or expenditure or an express or implied promise to make a contribution or expenditure in connection with a state election. Provides that the prohibition will be enforced only to the extent that federal law prohibits a foreign national from making a contribution or expenditure, and only to the extent permitted by federal law. Allows a charitable gaming permittee to use proceeds of a raffle or lottery to make expenditures under AS 05.15.150(a)(3).

**Section 11.** Provides that no person, other an individual exempt from reporting under AS 15.13.040(h), may make an expenditure unless the source of the expenditure has been disclosed.

**Section 12.** Amends language in AS 15.13.084 to clarify that a person may not make an expenditure anonymously unless it is made (1) for certain communications, (2) in connection with a ballot proposition as that term is defined by AS 15.13.065(c), and (3) by an individual acting independently of any other person.

**Section 13.** Expands the communication identification requirements of AS 15.13.090 to apply to communications made by all persons, and additionally requires a person other than a candidate, individual, or a political party to (1) identify the person's principal officer, (2) include a statement from that officer approving the communication, (3) provide the address of the person's principal place of business, and (4) identify the person's three largest contributors.

**Section 14.** Provides how the communication identification requirements of AS 15.13.090(a), as amended by the bill, must be met in print, video, and audio components of a communication.

**Section 15.** Requires expenditure reports filed under AS 15.13.040(e) to be filed within 10 days of the expenditure being made, except for an expenditure that exceeds \$250 and that is made within nine days of an election must be reported to APOC within 24 hours of the expenditure being made.

**Section 16.** Amends the language of AS 15.13.111(a) to require all persons who are required to report under AS 15.13 to preserve certain records for a period of six years.

**Section 17.** Removes language from AS 15.13.135 that permitted only individuals, groups, or nongroup entities to make independent expenditures in support or in opposition to a candidate for public office. Adds language requiring all persons making certain independent expenditures to comply with AS 15.13.090.

**Section 18.** Amends language in AS 15.56.014(a) to clarify that any person who knowingly prints, publishes, or leases a communication without the "paid for language" required by AS 15.13.090 has committed campaign misconduct in the second degree, a class B misdemeanor.

Section 19. Repeals AS 15.13.140(a), a provision that provided that AS 15.13 should not be interpreted to prohibit a person from making independent expenditures in support or in opposition to a ballot proposition or question.

Section 20. Gives the Act an immediate effective date.



# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 284  
(S) Publish Date: 3/2/10

Identifier (file name): SB284-OOG-DOE-2-26-10 Dept. Affected: OOG  
Title: "An Act relating to state election campaigns, the duties of the RDU Elections  
Alaska Public Offices Commission, the reporting...." Component: Elections  
Sponsor: Senate Judiciary Committee  
Requester: Senate State Affairs Committee Component Number: 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual		0.0						
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF		0.0						
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has no fiscal impact on the division.

Prepared by: Gail Fenumiai, Director  
Division: Division of Elections  
Approved by: Linda Perez, Director  
Division of Administrative Services

Phone 465-4611  
Date/Time 2/26/10, 10:39am  
Date 2/26/2010

# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 284  
(S) Publish Date: 3/2/10

Identifier (file name) SB284-DOA-APOC-02-24-10 Dept. Affected: Administration  
Title "An Act relating to state election campaigns ..." RDU AK Public Offices Commission  
Component AK Public Offices Commission  
Sponsor (S) JUD  
Requester (S) STA Component Number 70

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Personal Services	78.7		78.7	78.7	78.7	78.7	78.7
Travel							
Contractual	50.0						
Supplies							
Equipment	2.5						
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>131.2</b>	<b>0.0</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	131.2		78.7	78.7	78.7	78.7	78.7
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>131.2</b>	<b>0.0</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

### POSITIONS

Full-time	1		1	1	1	1	1
Part-time							
Temporary							

### ANALYSIS: *(Attach a separate page if necessary)*

This bill would impact the Alaska Public Offices Commission (APOC) through changes to regulations and changes to the electronic filing program, currently in development. As the bill requires more reporting, it will require additional staff time in assisting the filers; preparing manuals, performing training; and tracking and auditing reports. Changes to regulations will require an amendment to an existing contract estimated at \$25.0 and \$25.0 is included to analyze programming changes and capital funds necessary for the electronic filing program to accommodate the new reports. This increment includes 1 FT employee (range 16, Paralegal II) with computer and furniture.

Prepared by: Holly Hill, Director  
Division: Alaska Public Office Commission  
Approved by: Rachael Petro, Deputy Commissioner  
Department of Administration

Phone (907) 334-1726  
Date/Time 02/24/10 12:00pm  
Date 2/24/2010

R.O. n/o

adopted 4/17/10

26-LS1448\W  
Kurtz/Bullard  
4/17/10

**HOUSE CS FOR CS FOR SENATE BILL NO. 284(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to state election campaigns, the duties of the Alaska Public Offices**  
2 **Commission, the reporting and disclosure of expenditures and independent**  
3 **expenditures, the filing of reports, and the identification of certain communications in**  
4 **state election campaigns; prohibiting expenditures and contributions by foreign**  
5 **nationals in state elections; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 **\* Section 1. AS 15.13.010(b) is amended to read:**

8 (b) Except as otherwise provided, this chapter applies to contributions,  
9 expenditures, and communications made [BY A CANDIDATE, GROUP,  
10 NONGROUP ENTITY, MUNICIPALITY OR INDIVIDUAL] for the purpose of  
11 influencing the outcome of a ballot proposition or question as well as those made to  
12 influence the nomination or election of a candidate.

13 **\* Sec. 2. AS 15.13.030 is amended to read:**

1                   **Sec. 15.13.030. Duties of the commission.** The commission shall

2                   (1) develop and provide all forms for the reports and statements  
3 required to be made under this chapter, AS 24.45, and AS 39.50;

4                   (2) prepare and publish a manual setting out uniform methods of  
5 bookkeeping and reporting for use by persons required to make reports and statements  
6 under this chapter and otherwise assist **all persons** [CANDIDATES, GROUPS, AND  
7 INDIVIDUALS] in complying with the requirements of this chapter;

8                   (3) receive and hold open for public inspection reports and statements  
9 required to be made under this chapter and, upon request, furnish copies at cost to  
10 interested persons;

11                   (4) compile and maintain a current list of all filed reports and  
12 statements;

13                   (5) prepare a summary of each report filed under AS 15.13.110 and  
14 make copies of this summary available to interested persons at their actual cost;

15                   (6) notify, by registered or certified mail, all persons who are  
16 delinquent in filing reports and statements required to be made under this chapter;

17                   (7) examine, investigate, and compare all reports, statements, and  
18 actions required by this chapter, AS 24.45, and AS 39.50;

19                   (8) prepare and publish a biennial report concerning the activities of  
20 the commission, the effectiveness of this chapter, its enforcement by the attorney  
21 general's office, and recommendations and proposals for change; the commission shall  
22 notify the legislature that the report is available;

23                   (9) adopt regulations necessary to implement and clarify the provisions  
24 of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62  
25 (Administrative Procedure Act); and

26                   (10) consider a written request for an advisory opinion concerning the  
27 application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

28 \* **Sec. 3.** AS 15.13.040(d) is amended to read:

29                   (d) Every [INDIVIDUAL,] person [, NONGROUP ENTITY, OR GROUP]  
30 making an **independent** expenditure shall make a full report of expenditures **made**  
31 **and contributions received**, upon a form prescribed by the commission, unless

1 exempt from reporting.

2 \* Sec. 4. AS 15.13.040(e) is amended to read:

3 (e) Each person [THE REPORT] required to report under (d) of this section  
4 shall file a full report in accordance with AS 15.13.110(g) on a form prescribed by  
5 the commission. The report must contain

6 (1) the name, address, principal occupation, and employer of the  
7 individual filing the report;

8 (2) [, AND] an itemized list of all expenditures made, incurred, or  
9 authorized by the person;

10 (3) the name of the candidate or the title of the ballot proposition  
11 or question supported or opposed by each expenditure and whether the  
12 expenditure is made to support or oppose the candidate or ballot proposition or  
13 question;

14 (4) the name and address of each officer and director, when  
15 applicable;

16 (5) the aggregate amount of all contributions made to the person,  
17 if any, for the purpose of influencing the outcome of an election; for all  
18 contributions, the date of the contribution and amount contributed by each  
19 contributor; and, for a contributor

20 (A) who is an individual, the name and address of the  
21 contributor and, for contributions in excess of \$50 in the aggregate during  
22 a calendar year, the name, address, principal occupation, and employer of  
23 the contributor; or

24 (B) that is not an individual, the name and address of the  
25 contributor and the name and address of each officer and director of the  
26 contributor [EXPENDITURES. THE REPORT SHALL BE FILED WITH  
27 THE COMMISSION NO LATER THAN 10 DAYS AFTER THE  
28 EXPENDITURE IS MADE].

29 \* Sec. 5. AS 15.13.040(h) is amended to read:

30 (h) The provisions of (d) of this section do not apply to one or more  
31 expenditures made by an individual acting independently of any other person

1 [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER  
2 INDIVIDUAL] if the expenditures

3 (1) cumulatively do not exceed \$500 during a calendar year; and

4 (2) are made only for billboards, signs, or printed material concerning  
5 a ballot proposition as that term is defined by AS 15.13.065(c).

6 \* Sec. 6. AS 15.13.040(p) is amended to read:

7 (p) For purposes of (b), (e), and (j) of this section, "contributor" means the  
8 true source of the funds, property, or services being contributed.

9 \* Sec. 7. AS 15.13.040 is amended by adding a new subsection to read:

10 (q) For purposes of (e) of this section,

11 (1) "director" means a member of the board of directors of a  
12 corporation or any person performing a similar function with respect to any  
13 organization;

14 (2) "officer" means a president, vice president, secretary, or treasurer,  
15 principal financial officer, or comptroller of a corporation, or any person routinely  
16 performing functions similar to those of a president, vice president, secretary, or  
17 treasurer, principal financial officer, or comptroller with respect to any organization.

18 \* Sec. 8. AS 15.13 is amended by adding a new section to read:

19 **Sec. 15.13.052. Independent expenditures; political activities accounts.** (a)

20 Before making an independent expenditure in support of or in opposition to a  
21 candidate or before making an independent expenditure in support of or in opposition  
22 to a ballot proposition or question, each person other than an individual, candidate, or  
23 nongroup entity with an annual operating budget of \$250 or less, shall establish a  
24 political activities account. The political activities account may be a separate account  
25 in the person's general treasury. The political activities account must be administered  
26 using generally accepted accounting principles. All funds used by the person to make  
27 independent expenditures must be drawn from the person's political activities account.

28 (b) Records necessary to substantiate that the requirements of (a) of this  
29 section have been met must be made available for inspection by the commission.

30 (c) Each person who has established a political activities account under this  
31 section shall preserve all records necessary to substantiate the person's compliance

1 with the requirements of this section for each of the six preceding years.

2 \* **Sec. 9.** AS 15.13.067 is amended to read:

3 **Sec. 15.13.067. Who may make expenditures.** Only the following may make  
4 an expenditure that is not an independent expenditure in an election for candidates  
5 for elective office:

- 6 (1) the candidate;
- 7 (2) an individual;
- 8 (3) a group that has registered under AS 15.13.050; and
- 9 (4) a nongroup entity that has registered under AS 15.13.050.

10 \* **Sec. 10.** AS 15.13 is amended by adding new sections to read:

11 **Sec. 15.13.068. Expenditures and contributions by foreign nationals.** (a) A  
12 foreign national may not, directly or indirectly, in connection with an election under  
13 this chapter, make a contribution or expenditure or make an express or implied  
14 promise to make a contribution or expenditure.

15 (b) In this section, "foreign national" includes

16 (1) an individual who is not a United States citizen or lawfully  
17 admitted for permanent residence under 8 U.S.C. 1101(a)(20);

18 (2) a foreign government, every political subdivision of a foreign  
19 government, every official, agent, or representative of a foreign government, and  
20 every agency, corporation, or instrumentality of the foreign government or of a  
21 political subdivision of a foreign government;

22 (3) a person outside of the United States, unless it is established that  
23 the person is an individual and a citizen of and domiciled in the United States, or that  
24 the person is not an individual and is organized under or created by the laws of the  
25 United States or of any state or other place subject to the jurisdiction of the United  
26 States and has its principal place of business in the United States; or

27 (4) a partnership, association, corporation, organization, or other  
28 combination of persons organized under the laws of or having its principal place of  
29 business in a foreign country.

30 (c) The provisions of this section prohibit a foreign national from making a  
31 contribution or expenditure in connection with a state election only to the extent

1 (1) that federal law prohibits a foreign national from making a  
2 contribution or expenditure in connection with a state election; and

3 (2) permitted by federal law.

4 **Sec. 15.13.069. Certain expenditures that comply with charitable gaming**  
5 **provisions permitted.** Notwithstanding another provision of this title, a charitable  
6 gaming permittee that is a qualified organization under AS 05.15.690 may use the net  
7 proceeds of a raffle or lottery to make expenditures for the purposes permitted under  
8 AS 05.15.150(a)(3).

9 \* **Sec. 11.** AS 15.13.082(b) is amended to read:

10 (b) A person, other than an individual exempt from reporting under  
11 AS 15.13.040(h), [CANDIDATE, GROUP, OR NONGROUP ENTITY] may not  
12 make an expenditure unless the source of the expenditure has been disclosed as  
13 required by this chapter.

14 \* **Sec. 12.** AS 15.13.084 is amended to read:

15 **Sec. 15.13.084. Prohibited expenditures.** A person may not make an  
16 expenditure

17 (1) anonymously, unless the expenditure is

18 (A) paid for by an individual acting independently of any  
19 person [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF  
20 ANY OTHER INDIVIDUAL];

21 (B) made to influence the outcome of a ballot proposition as  
22 that term is defined by AS 15.13.065(c); and

23 (C) made for

24 (i) a billboard or sign; or

25 (ii) printed material, other than an advertisement made  
26 in a newspaper or other periodical;

27 (2) using a fictitious name or using the name of another.

28 \* **Sec. 13.** AS 15.13.090 is amended to read:

29 **Sec. 15.13.090. Identification of communication.** (a) All communications  
30 shall be clearly identified by the words "paid for by" followed by the name and  
31 address of the person [CANDIDATE, GROUP, NONGROUP ENTITY, OR

1 INDIVIDUAL] paying for the communication. In addition, except as provided by (d)  
2 of this section, a person shall clearly

3 (1) provide the person's address or the person's principal place of  
4 business;

5 (2) for a person other than an individual or candidate, include

6 (A) the name and title of the person's principal officer;

7 (B) a statement from the principal officer approving the  
8 communication; and

9 (C) identification of the name and city and state of  
10 residence or principal place of business, as applicable, of each of the

11 person's three largest contributors under AS 15.13.040(e)(5), if any,  
12 during the 12-month period before the date of the communication

13 [CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR  
14 CAMPAIGN CHAIRPERSON].

15 (b) The provisions of (a) of this section do not apply when the communication

16 (1) is paid for by an individual acting independently of any other  
17 person [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY  
18 OTHER INDIVIDUAL];

19 (2) is made to influence the outcome of a ballot proposition as that  
20 term is defined by AS 15.13.065(c); and

21 (3) is made for

22 (A) a billboard or sign; or

23 (B) printed material other than an advertisement made in a  
24 newspaper or other periodical.

25 \* Sec. 14. AS 15.13.090 is amended by adding new subsections to read:

26 (c) To satisfy the requirements of (a)(1) of this section and, if applicable,  
27 (a)(2)(C) of this section, a communication that includes a print or video component  
28 must have the following statement or statements placed in the communication so as to  
29 be easily discernable:

30 This communication was paid for by (person's name and city  
31 and state of principal place of business).

1           The top contributors of (person's name) are (the name and city  
2           and state of residence or principal place of business, as applicable, of  
3           the largest contributors to the person under AS 15.13.090(a)(2)(C)).

4           (d) Notwithstanding the requirements of (a) of this section, in a  
5           communication transmitted solely through radio or other audio media, the following  
6           statements must be read in a manner that is easily heard; the second statement is not  
7           required if the person paying for the communication has no contributors:

8           This communication was paid for by (person's name).

9           The top contributors of (person's name) are (the name of the largest  
10          contributors to the person under AS 15.13.090(a)(2)(C)).

11          (e) Contributors required to be identified under (a)(2)(C) of this section must  
12          be listed in order of the amount of their contributions. If more than three of the largest  
13          contributors to a person paying for a communication contribute equal amounts, the  
14          person may select which of the contributors of equal amounts to identify under  
15          (a)(2)(C) of this section. In no case shall a person be required to identify more than  
16          three contributors under (a)(2)(C) of this section.

17          (f) The provisions of this subsection apply to a person who makes an  
18          independent expenditure for a communication described in (a) of this section. If the  
19          person paying for the communication is not a natural person, the provisions also apply  
20          to the responsible officer or officers of the corporation, company, partnership, firm,  
21          association, organization, labor organization, business trust, or society who approves  
22          the independent expenditure for the communication. A person who makes a  
23          communication under this subsection may not, with actual malice, include within or as  
24          a part of the communication a false statement of material fact about a candidate for  
25          election to public office that constitutes defamation of the candidate. For purposes of  
26          this subsection, a statement constitutes defamation of the candidate if the statement

27                  (1) exposes the candidate to strong disapproval, contempt, ridicule, or  
28          reproach; or

29                  (2) tends to deprive the candidate of the benefit of public confidence.

30          \* **Sec. 15.** AS 15.13.110 is amended by adding a new subsection to read:

31                  (g) An independent expenditure report required under AS 15.13.040(e) shall

1 be filed with the commission not later than 10 days after an independent expenditure  
2 has been made. However, an independent expenditure that exceeds \$250 and that is  
3 made within nine days of an election shall be reported to the commission not later than  
4 24 hours after the expenditure is made.

5 \* **Sec. 16.** AS 15.13.111(a) is amended to read:

6 (a) Each [CANDIDATE, GROUP, NONGROUP ENTITY, OR] person  
7 required to report under this chapter shall preserve all records necessary to substantiate  
8 information required to be reported under this chapter for a period of six years from  
9 the date of the election for which the information was required to be reported, unless  
10 the records have been submitted to the commission under (c) of this section.

11 \* **Sec. 17.** AS 15.13.135 is amended to read:

12 **Sec. 15.13.135. Independent expenditures for or against candidates.** (a)  
13 [ONLY AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY MAY MAKE AN  
14 INDEPENDENT EXPENDITURE SUPPORTING OR OPPOSING A CANDIDATE  
15 FOR ELECTION TO PUBLIC OFFICE.] An independent expenditure supporting or  
16 opposing a candidate for election to public office, except an independent expenditure  
17 made by a nongroup entity with an annual operating budget of \$250 or less, shall be  
18 reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other  
19 requirements of this chapter.

20 (b) A person [AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY] who  
21 makes independent expenditures for a mass mailing, for distribution of campaign  
22 literature of any sort, for a television, radio, newspaper, or magazine advertisement, or  
23 any other communication that supports or opposes a candidate for election to public  
24 office

25 (1) shall comply with AS 15.13.090; and

26 (2) shall place the following statement in the mailing, literature,  
27 advertisement, or other communication so that it is readily and easily discernible:

28 This NOTICE TO VOTERS is required by Alaska law. (I/we) certify  
29 that this (mailing/literature/advertisement) is not authorized, paid for,  
30 or approved by the candidate.

31 \* **Sec. 18.** AS 15.56.014(a) is amended to read:

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(a) A person commits the crime of campaign misconduct in the second degree if the person

(1) knowingly circulates or has written, printed, or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) except as provided by AS 15.13.090(b), knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement, or communication, as that term is defined in AS 15.13.400, intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the person [CANDIDATE, GROUP, OR INDIVIDUAL] paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair;

(3) knowingly makes a communication, as that term is defined in AS 15.13.400,

(A) containing false factual information relating to a candidate for an election;

(B) that the person knows to be false; and

(C) that would provoke a reasonable person under the circumstances to a breach of the peace or that a reasonable person would construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office.

\* Sec. 19. AS 15.13.140(a) is repealed.

\* Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

failed  
5-6

Conceptual AMENDMENT #1

OFFERED IN THE HOUSE

TO: HCS CSSB 284(FIN)  
26-LS1448W

OFFERED BY: Representatives Gara and Doogan

DELETE: at page 8, line 5: after "communication transmitted" delete "solely"

INSERT: at page 8, line 5: after "or other audio media," insert:

"and in a communication that includes an audio component,"

Conceptual AMENDMENT # 2

failed 5-6

OFFERED IN THE HOUSE

TO: HCS CSSB 284(FIN)  
26-LS1448W

OFFERED BY: Representatives Gara and Doogan

DELETE: at page 8, line 5: after "communication transmitted" delete "solely"

INSERT: at page 8, line 5: after "or other audio media," insert:

"and in a communication that includes an audio component,"

INSERT: at page 8, line <sup>7</sup>~~7~~: after "no contributors" insert "or, for any of the three largest contributors who have contributed less than \$2,000:"

2010 HOUSE FINANCE  
VOTE CALL

DATE: 4-17-10

Amendment: Conceptual Amend 2

MEMBER	Favor	Oppose
REP. SALMON	✓	
REP. THOMAS		✓
REP. AUSTERMAN		✓
REP. DOOGAN	✓	
REP. FAIRCLOUGH		✓
REP. FOSTER	✓	
REP. GARA	✓	
REP. JOULE	✓	
REP. KELLY		✓
REP. HAWKER		✓
REP. STOLTZE		✓

YEA 5

NAY 6

2010 HOUSE FINANCE  
VOTE CALL

*failed 5-6*

DATE: 4/17/10

Amendment: Conceptual Amend 1

MEMBER	Favor	Oppose
REP. KELLY		✓
REP. SALMON	✓	
REP. THOMAS		✓
REP. AUSTERMAN		✓
REP. DOOGAN	✓	
REP. FAIRCLOUGH		✓
REP. FOSTER	✓	
REP. GARA	✓	
REP. JOULE	✓	
REP. STOLTZE		✓
REP. HAWKER		✓

YEA 5

NAY 6

# MEMORANDUM

# STATE OF ALASKA

DEPARTMENT OF LAW

TO: Mike Nizich  
Chief of Staff  
Office of the Governor

DATE: February 19, 2010

FROM: Daniel S. Sullivan  
Attorney General

SUBJECT: Analysis of *Citizens United v. Federal Election Commission* and its Impact on Alaska Campaign Finance Laws

The following is our response to your request for an analysis of the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* 558 U.S. \_\_\_, --- S.Ct. ---- (2010) and how that decision impacts Alaska's campaign finance laws. The ruling affects the balance between a government's interest in ensuring transparent and fair elections and the First Amendment rights of organizations, such as corporations and labor unions, to engage in political speech. In this memorandum we will describe the holding of the case as well as its direct and indirect effects on Alaska law.

## I. Summary

Our analysis addresses two main points. First, under *Citizens United*, Alaska may not prohibit political speech by corporations and labor unions altogether.<sup>1</sup> As a result, our laws prohibiting independent expenditures by corporations and labor unions in a candidate election are likely unconstitutional.

Second, Alaska's laws regarding contributions to candidates, coordinated expenditures, disclaimers, and disclosures are not directly affected by *Citizens United*. Alaska's laws continue to regulate corporate and labor union political speech through disclaimer and disclosure requirements. However, some disclaimer and disclosure laws that provide specific standards for reporting and identification of expenditures do not currently apply to corporations and labor unions.

## II. *Citizens United v. Federal Election Commission*

On January 21, 2010, the United States Supreme Court issued its opinion in *Citizens United v. Federal Election Commission*.<sup>2</sup> The Court's main holding was that

<sup>1</sup> See 558 U.S. \_\_\_, at 2, --- S.Ct. ---- (2010).

<sup>2</sup> 558 U.S. \_\_\_, --- S.Ct. ---- (2010).

“the Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.”<sup>3</sup> The particular federal law reviewed by the Court, part of the Bipartisan Campaign Reform Act of 2002,<sup>4</sup> prohibited corporations and unions from using their general treasury funds to make independent expenditures for speech that is an electioneering communication or for speech that expressly advocates the election or defeat of a candidate.<sup>5</sup> The Court held that this prohibition on corporate and labor union speech violated the First Amendment to the United States Constitution. Because the First Amendment applies to states as well as the federal government, the ruling not only strikes down the federal requirement, it also calls into question similar provisions enacted by the State of Alaska.<sup>6</sup>

The Court further ruled that the disclosure and disclaimer laws under the Bipartisan Campaign Reform Act are justified to provide the electorate with information about the sources of election-related spending and that disclosure assists citizens in making informed choices in the marketplace of political ideas.<sup>7</sup>

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> 2 U.S.C. § 441b (2000).

<sup>5</sup> 2 U.S.C. § 441b(b)(2) prohibited corporations and labor unions from using general treasury funds to make expenditures on electioneering communications, which include broadcast, cable, or satellite communications that refer to a clearly identified candidate for federal office and are made within 30 days of a primary or 60 days of a general election. 2 U.S.C. § 434(f)(3)(A); 11 CFR § 100.29(a)(2)(2009).

<sup>6</sup> See *Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 630 (1925) (freedom of speech protected by the First Amendment from abridgment by Congress is among the fundamental personal rights protected by the due process clause of the Fourteenth Amendment from impairment by the States); see also *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625 (1931); *DeJonge v. Oregon*, 299 U.S. 353, 57 S.Ct. 255 (1937).

<sup>7</sup> 558 U.S. \_\_\_, at 51-2 (citing *Buckley v. Valeo*, 424 U.S. 1, 66, 96 S.Ct. 612, 657 (1976) (*per curiam*)). Under federal law, televised electioneering communications funded by anyone other than a candidate must include a disclaimer describing the entity responsible for the content of the ad. The required statement must be made in a clearly spoken manner and displayed on the screen in a clearly readable manner for at least four seconds. It must state that the communication is not authorized by any candidate or candidate’s committee and it must display the name and address of the person or group that funded the advertisement. *Id.* (citing 2 U.S.C. § 441d(a)(2)).

### III. The Direct and Indirect Impacts of *Citizens United* on Alaska Laws

#### A. Overview

Alaska campaign finance laws regulate a majority of state elections, the ballot proposition process, lobbying, and the judicial retention process.<sup>8</sup> These laws regulate the conduct of candidates, political parties, individuals, lobbyists, corporations, labor unions, groups, and other entities. Both state and federal campaign finance laws make several important distinctions with respect to the application of such laws. For instance, Alaska campaign finance laws distinguish “contributions” from “expenditures.” A contribution is basically a purchase, payment, or deposit rendered directly to a candidate or political party.<sup>9</sup> An expenditure is defined broadly to include several activities which are not direct contributions to candidates. Expenditures include direct payments for services but also include various communications.<sup>10</sup> An “independent expenditure” is a type of expenditure but is more limited in that it is made without any coordination with a candidate.<sup>11</sup>

Another important distinction is between disclosures and disclaimers. Certain campaign finance laws mandate public reporting of expenditures made. In campaign finance jurisprudence, these laws are referred to as disclosure laws. When a campaign finance law requires an identification to be placed on a communication, courts and campaign finance law commentators broadly refer to this as a disclaimer law. The Alaska Public Offices Commission enforces the legality of contributions and expenditures and also ensures that individuals and entities are properly disclosing and disclaiming their conduct as it relates to an election.<sup>12</sup>

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<sup>8</sup> See AS 15.13.010(a)(1)-(2)(describing scope of AS 15.13, entitled State Election Campaigns).

<sup>9</sup> See AS 15.13.400(4)(A).

<sup>10</sup> An expenditure is defined, in relevant part, as “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...influencing...[the outcome of an election].” Expenditures also include “express communications” and “electioneering communications.” AS 15.13.400(6).

<sup>11</sup> An independent expenditure “means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate’s campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate.” AS 15.13.400(10).

<sup>12</sup> See generally AS 15.13.010(b); AS 15.13.400(1); AS 15.13.400(8), (11), (13)-(15); AS 15.13.030.

*Citizens United* directly implicates one key aspect of Alaska's campaign finance laws: Alaska's prohibition on independent expenditures by corporations or labor unions in candidate elections.<sup>13</sup> The decision does not directly call into question the constitutionality of any other contribution, expenditure, disclaimer or disclosure law. For example, Alaska's prohibition on direct contributions to candidates by corporations and labor unions is unaffected.<sup>14</sup> Candidates and their agents are still prohibited from accepting contributions from corporations and labor unions.<sup>15</sup> A corporation or labor union still may not directly or indirectly consult or cooperate with candidates or their agents when making an expenditure.<sup>16</sup> Individuals are still limited to contributing \$500 per year to a candidate, and \$5,000 per year to a political party,<sup>17</sup> and corporations and labor unions must continue to follow disclosure laws whenever applicable.<sup>18</sup> The current statutes and regulations that require that an independent expenditure in a candidate election be reported within 10 days will be applicable to a corporation or labor union that makes such an expenditure.<sup>19</sup> There must be some identification of corporations or labor

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<sup>13</sup> See AS 15.13.067; AS 15.13.135(a).

<sup>14</sup> See AS 15.13.065(a); AS 15.13.074(a).

<sup>15</sup> AS 15.13.072(a)(1).

<sup>16</sup> AS 15.13.400(10). 2 AAC 50.270 provides guidance as to what constitutes an independent expenditure. Where an expenditure is based on information provided by the candidate or an agent of a group or nongroup entity, it is not an independent expenditure. An expenditure is not an independent expenditure if it is made based on data from a candidate's, group's, or nongroup entity's pollster or campaign consultant or any other person who receives compensation or reimbursement from the campaign. Solicitations to a candidate, group, or nongroup entity, or an expenditure made to finance distribution of campaign material provided by the candidate or his agents are not independent expenditures.

<sup>17</sup> AS 15.13.070(b)(1)-(2).

<sup>18</sup> See AS 15.13.400(14); AS 01.10.060. Because the relevant statutes define "person" to include a corporation or labor union, statutes and regulations that cover a "person" apply to any corporation or union making an independent expenditure in a candidate election.

<sup>19</sup> AS 15.13.040(d) states that "every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting." AS 15.13.040(e) states that "the report required under (d) must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made." The reporting requirement of AS 15.13.040(d) and (e) applies to all "persons"

unions making an independent expenditure as they are subject to the requirement that such independent expenditures may not be made anonymously.<sup>20</sup>

#### **B. Alaska's Prohibition on Expenditures – AS 15.13.067 and AS 15.13.135(a)**

*Citizens United* likely invalidates AS 15.13.067 and AS 15.13.135(a) in their current form. Under AS 15.13.067, expenditures in candidate elections may only be made by candidates, individuals, groups, and nongroup entities. Under AS 15.13.135(a), “independent expenditures” in candidate elections may only be made by individuals, groups and nongroup entities. Because labor unions and corporations do not fall within the definitions of individual, group, or non-group entity,<sup>21</sup> AS 15.13.067 and AS 15.13.135(a) prohibit corporations and labor unions from making any expenditures in candidate elections. Alaska law defines expenditure broadly to include activities which are political speech.<sup>22</sup> After *Citizens United*, these specific prohibitions will not likely pass constitutional muster.

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who make an expenditure. A person is defined to include corporations and unions. AS 15.13.400(14); AS 01.10.060.

Alaska regulations likewise require reporting of all independent expenditures. 2 AAC 50.270(c) provides that “a person making an independent expenditure must disclose the following on an independent expenditure report under AS 15.13.040 (d) and (e): (1) the date of the expenditure; (2) the amount of the expenditure; (3) the check number, if the expenditure is paid by check; (4) the name and address of the payee; (5) a description of items or services purchased; (6) identification of the candidate or ballot proposition the expenditure was intended to influence; (7) a statement as to whether the expenditure was intended to support or oppose the candidate or ballot proposition.”

<sup>20</sup> AS 15.13.084 states that “a person may not make an expenditure anonymously,” unless the expenditure is made by an individual acting independently and the expenditure is made for a billboard or sign, or printed material other than an advertisement in a newspaper or other periodical.

<sup>21</sup> AS 15.13.400(8), (11), (13).

<sup>22</sup> Specifically, Alaska law prohibits corporations and labor unions from making express communications, electioneering communications, and any payment made to influence the outcome of a candidate election. AS 15.13.400(6)(A)(i);(C); *see also* AS 15.13.400(5), (7). Other parts of the expenditure definition do not implicate political speech. For example, expenditures include purchases made for the purpose of a political party or direct payment of personal services rendered to a candidate or political party. *See, e.g.*, AS 15.13.400(6)(A)(ii)-(iii).

Accordingly, we recommend that these two statutes be amended to conform to the holding of *Citizens United* in order to clarify the extent to which corporations and labor unions may make independent expenditures.

**C. Disclosure of Expenditures – AS 15.13.040(d) and (e)**

The Supreme Court in *Citizens United* specifically upheld laws requiring the disclosure of independent expenditures. The Court found that the disclosure laws assisted the electorate in making informed choices in the marketplace of political ideas.<sup>23</sup> Accordingly, *Citizens United* does not suggest that Alaska's disclosure laws are in any way unconstitutional. Alaska Statute 15.13.040(d) and (e) is a disclosure law that broadly applies to corporations and labor unions making independent expenditures in a candidate election. It provides that any person making any expenditure must report the expenditure within 10 days. Because corporations and unions are deemed to be "persons" under Alaska law, this requirement applies to them as well.<sup>24</sup> Thus, the requirement to disclose is written broadly enough to require disclosure of expenditures made by corporations and labor unions.

**D. Disclaimers For Communications – AS 15.13.084; AS 15.13.090; and AS 15.13.135(b)(2)**

*Citizens United* upheld federal disclaimer laws.<sup>25</sup> Thus, the decision does not suggest that Alaska's disclaimer laws suffer from any constitutional infirmity. Alaska Statute 15.13.090 is a disclaimer law requiring certain communications to be identified by the words "paid for by" followed by the name of the candidate, group or nongroup entity paying for the communication. Alaska Statute 15.13.135(b)(2) is a disclaimer law which requires that certain independent expenditures contain a disclaimer that they are not authorized or paid for by a candidate. However, because corporations and labor unions were not permitted to make any expenditures in a candidate election, these specific statutes were not written to apply to them, and only refer to individuals, groups, and nongroup entities.

Corporations and labor unions are nevertheless subject to AS 15.13.084 which prohibits independent expenditures in a candidate election from being made

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<sup>23</sup> 558 U.S. at 51-2 (citing *Buckley*, 424 U.S. at 66, 96 S.Ct. at 657).

<sup>24</sup> See *supra* note 18. Cf 2 AAC 50.270(c) (reporting of independent expenditures applies to "persons," and thus to corporations and labor unions). Additionally, "persons," including corporations and labor unions, are required to preserve their expenditure records for up to 6 years after the expenditure is made. AS 15.13.111.

<sup>25</sup> 558 U.S. at 51-2 (citing *Buckley v. Valeo*, 424 U.S. at 66, 96 S.Ct. at 657).

anonymously; thus some identification is required.<sup>26</sup> This prohibition is very general and it is unclear how a corporation or labor union must identify itself when making the expenditure. This may create uncertainty among corporations and labor unions about how to proceed with speech protected under *Citizens United*. Therefore, consideration should be given to amending AS 15.13.084 to clarify how corporations or labor unions must identify themselves when exercising their right to make independent expenditures in an election. As discussed above, it would be constitutional to extend the requirements of AS 15.13.090 and AS 15.13.135(b)(2) to corporations and labor unions.

**E. Other Reporting and Disclosure Issues – AS 15.13.110 and AS 15.13.086(2)**

As stated above, *Citizens United* did not invalidate disclosure or disclaimer laws,<sup>27</sup> and Alaska statutes currently require all persons making independent expenditures to report those expenditures to The Alaska Public Offices Commission within 10 days.<sup>28</sup> However, policy makers should consider whether other forms of disclosure for corporations and labor unions making independent expenditures in candidate elections are appropriate. For example, under AS 15.13.110, groups, nongroup entities, and candidates must file reports for election-related activity 30 days before an election, seven days before an election, and at year's end. The reporting requirements under AS 15.13.110 do not apply to "persons" and thus corporations and labor unions, like individuals, are exempt. Because corporations and labor unions were not allowed to make independent expenditures when this statutory scheme was created, we do not believe the drafters had corporations and unions in mind when this requirement was imposed only on candidates, groups and nongroup entities.

In addition to reporting expenditures, AS 15.13.110 requires groups,<sup>29</sup> nongroup entities,<sup>30</sup> and candidates<sup>31</sup> to include information regarding the source of all contributions in these reports. Under current Alaska law, corporations and labor unions would be required to report only their expenditures.<sup>32</sup> But as there is currently no Alaska

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<sup>26</sup> AS 15.13.084, prohibits all "persons" from making anonymous expenditures and expenditures using a fictitious name or the name of another. As explained above, corporations and labor unions are persons under the law.

<sup>27</sup> 558 U.S. at 51-2.

<sup>28</sup> AS 15.13.040(d)-(e).

<sup>29</sup> AS 15.13.400(8).

<sup>30</sup> AS 15.13.400(13).

<sup>31</sup> AS 15.13.400(1).

<sup>32</sup> AS 15.13.040(d)-(e).

law that requires a corporation or labor union to report the source of funds used to make expenditures, corporations and labor unions could receive funds for the purpose of making an independent expenditure in a candidate election. This situation was not contemplated at the time these reporting statutes were enacted due to the prohibition on expenditures by corporations or labor unions in candidate elections.

Additionally, while candidate contributions exceeding \$250 made within nine days of the election must be reported to The Alaska Public Offices Commission within 24 hours of receipt by the candidate,<sup>33</sup> under current law, an independent expenditure made within 10 days of a candidate election does not have to be reported until after the election.<sup>34</sup> The latter timeline now likely applies to corporations and labor unions making independent expenditures in candidate elections after *Citizens United*.

#### F. Independent Expenditures by Foreign Corporations

Federal law currently prohibits expenditures made by foreign nationals and foreign corporations in state elections.<sup>35</sup> *Citizens United* did not invalidate this law, nor did it decide whether the federal government has a compelling interest in preventing foreign individuals or associations from influencing our nation's political process.<sup>36</sup> Alaska law does not have a corresponding prohibition on expenditures made by foreign nationals or foreign corporations in our elections.<sup>37</sup>

#### IV. Conclusion

*Citizens United* has had both direct and indirect impacts on Alaska campaign financing laws. We recommend that those laws directly impacted by the ruling, the prohibition on expenditures by corporations and labor unions, be amended to provide more clarity to Alaskans. We also identify, for your consideration, other areas of law regulating expenditures that were indirectly impacted by this decision.

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<sup>33</sup> AS 15.13.110(b).

<sup>34</sup> See AS 15.13.040(d)-(e).

<sup>35</sup> 2 U.S.C. § 441e prohibits any foreign national, including any foreign associations such as foreign corporations, from spending funds in connection with any state or local election in the United States.

<sup>36</sup> 558 U.S. \_\_\_, at 47 citing 2 U.S.C. § 441(e).

<sup>37</sup> Because Alaska law currently restricts all expenditures, Alaska statutes do not differentiate between foreign and domestic corporations. AS 15.13.400(14); AS 01.10.060.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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## MEMORANDUM

January 25, 2010

**SUBJECT:** Citizens United v. Federal Election Commission  
(Work Order No. 26-LS1367)

**TO:** Representative Jay Ramras  
Attn: Jane Pierson

**FROM:** Alpheus Bullard *LAB*  
Legislative Counsel

You requested a legal analysis of the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. \_\_\_\_ (January 21, 2010), and its effect on Alaska law.

### **WHAT IS MOST SIGNIFICANT**

The Court held that the government cannot suppress political speech on the basis of the speaker's corporate identity.

### **WHAT THE DECISION DOES NOT DO**

This is a case about independent election campaign expenditures made by corporations. Because one of the statutes involved in this case and considered by the Court concerned labor unions, it also, arguably, is a case about independent election campaign expenditures made by labor unions, though that is not made explicit in the opinion. Laws regulating corporate and union contributions to candidates, party committees, and political action committees, whether direct or in-kind, are not directly affected by the ruling. Disclosure and disclaimer requirements for communications relating to elections for public office and laws requiring corporations and unions to identify the sources of money for their political activities are also unaffected.

### **FACTS AND PROCEDURAL POSTURE**

The case involved a documentary critical of the then potential presidential candidacy of Hillary Clinton. The documentary, "Hillary: The Movie," was produced by Citizens United, a nonprofit corporation. Anticipating that it would make the documentary available within a time period prohibited under the Bipartisan Campaign Reform Act of 2002 (BCRA),<sup>1</sup> Citizens United sought declaratory and injunctive relief in the United

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<sup>1</sup> 2 U.S.C. § 431 *et seq.* (also known as the McCain-Feingold Act (Pub. L. No. 107-155, 116 Stat. 81)).

States District Court for the District of Columbia seeking to prevent the Federal Election Commission (FEC) from enforcing provisions of the BCRA.<sup>2</sup> Citizens United argued that § 203 of the BCRA<sup>3</sup> violated the First Amendment on its face and as applied to the documentary and its related advertisements, and that §§ 201<sup>4</sup> and 311<sup>5</sup> of the Act, relating to disclosure, disclaimer, and reporting requirements were, as applied to the documentary, also unconstitutional.

The United States District Court denied the injunction, holding that under § 203 of the BCRA the documentary could not be shown on television in the 30 day period preceding the 2008 Democratic primaries. The court held that the BCRA prohibitions against corporate independent expenditures were constitutional, reasoning that the question had been answered by the Supreme Court in McConnell v. Federal Election Commission, 540 U.S. 93 (2003).<sup>6</sup> The United States District Court held that the documentary had no other purpose than to discredit Hillary Clinton and inform viewers that she was unfit for public office, and thus the provision of the BCRA relating to electioneering communications

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<sup>2</sup> Citizens United v. Fed. Election Commission, 530 F. Supp. 2d 274 (D.D.C. 2008).

<sup>3</sup> Section 203 of the BCRA regulates "electioneering communications." Generally, these are broadcast, cable, or satellite communications made within 60 days of a general election or 30 days of a primary election. 2 U.S.C. § 434(f)(3)(A)(i). Section 203 restricts corporations (other than media corporations) and labor organizations from funding electioneering communications from their general funds except under certain specific circumstances, e.g., get-out-the-vote campaigns. 2 U.S.C. § 441b(b)(2).

<sup>4</sup> Under § 201 of the BCRA, persons who disburse an aggregate of \$10,000 or more a year for the production and airing of electioneering communications are required to file a statement with the Federal Election Commission (FEC) that includes the names and addresses of persons who have contributed in excess of \$1,000 to accounts funding the communication. See 2 U.S.C. § 434(f)(1) and (2).

<sup>5</sup> Under the BCRA's § 311, the entity paying for a communication that is not authorized by a candidate or the candidate's political committee, must include in the communication a statement that the organization "is responsible for the content of this advertising." See 2 U.S.C. § 441d.

<sup>6</sup> In McConnell, the United States Supreme Court upheld § 203 as facially constitutional, reasoning that the justifications for regulating independent corporate expenditures constituting express advocacy "apply equally" to ads that are "the functional equivalent of express advocacy." Id. at 206. The Court held that the regulation of such independent expenditures was acceptable because the government has a compelling interest in countering the kind of "corrosive and distorting effect" identified in Austin. Id. at 205.

was not unconstitutionally applied. Lastly, the court ruled that the Act's disclosure, disclaimer, and reporting requirements were not unconstitutional as applied to the documentary or its advertisements.

Citizens United appealed the decision and the Supreme Court docketed the case on August 18, 2008,<sup>7</sup> hearing oral arguments on March 24, 2009. However, on June 29, 2009, the Supreme Court ordered the parties to reargue the case on September 9 after submitting briefs on the larger questions of whether the Court should overrule Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)<sup>8</sup>, that portion of McConnell 540 U.S. 93 (2003) that found § 203 of the BCRA to be facially valid, or both.

### **ANALYSIS**

In Citizens United, 558 U.S. \_\_\_\_ (January 21, 2010), the Supreme Court considered (1) the validity of § 203 of the BCRA, which prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication"; (2) the Court's prior holding in Austin that political speech may be banned based on the speaker's corporate identity; and (3) whether §§ 201 and 311 of the BCRA, which mandate disclaimer and disclosure requirements for Citizens United's ads, were constitutionally invalid.

#### **Prohibitions on Independent Expenditures**

The Court held that § 203 of the BCRA, which prohibits certain corporations and unions from using funds from their general treasuries<sup>9</sup> for certain independent expenditures made to influence the outcomes of elections for federal public office, was unconstitutional.<sup>10</sup> It

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<sup>7</sup> Under § 403(a)(3) of the BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States."

<sup>8</sup> In Austin, the Court upheld a Michigan law that barred corporations from using their general treasury funds to support or oppose any state candidate, even though the spending occurred independently of that candidate's campaign operation.

<sup>9</sup> Prior to the ruling, to spend money on "electioneering communications" under federal law, corporations and unions were required to establish political action committees (PACS) that had a separate legal identity from the corporation or union. PACS could receive limited donations from employees, shareholders, or organization members. Now, after the Citizens United decision, corporations and unions may spend money directly from their treasuries on independent expenditures to influence elections for public office.

<sup>10</sup> While § 203 of the BCRA applied equally to corporations and unions, independent expenditures made by unions were not an issue before the Court, and it is not explicit in the ruling that the BCRA's independent expenditure prohibition is lifted for unions.

determined that prohibitions on corporate independent expenditures are an impermissible "ban on speech," *id.* at 22, and that political speech does not lose First Amendment protection "simply because its source is a corporation," *id.* at 26.<sup>11</sup>

The Court held that the case could not be decided in an examination of the relevant provisions of the BCRA alone, because the fundamental legal rationale underlying the challenged provisions of the Act was itself unjustified by a sufficient governmental interest.<sup>12</sup> The Court held that this rationale, identified in Austin, the prevention of "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form that have little or no correlation to the public's support for the corporation's political ideas," *id.* at 660, is inconsistent with the protections offered speech and speakers by the First Amendment.<sup>13</sup>

#### **Precedent Overturned**

The Court overruled Austin, and those portions of McConnell that upheld the BCRA's restrictions on independent expenditures made by corporations and labor organizations. It did so holding that "no sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations[.]" and "[g]overnment may not suppress political speech on the basis of the speaker's corporate identity." Citizens United, 558 U.S. at 50.<sup>14</sup>

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<sup>11</sup> Of less immediate consequence, in the absence of acknowledgement by the Court of any permissible First Amendment distinctions between corporate and natural persons, the case raises questions relating to whether corporations' newly realized equality under the First Amendment will affect (1) the constitutionality of existing prohibitions against corporate contributions to candidates in elections for public office and (2) other corporate related constitutional jurisprudence. These remain for future litigation.

<sup>12</sup> "When constitutional questions are 'indispensably necessary' to resolving the case at hand, 'the court must meet and decide them.'" Citizens United v. Federal Election Commission, 558 U.S. at 4 of Roberts, C.J. (concurring opinion), quoting Ex parte Randolph, 20 F. Cas. 242, 254 (No. 11, 558) (CC Va. 1833) (Marshall, C.J.).

<sup>13</sup> The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech . . . ."

Given the Court's interpretation of the requirements of the First Amendment, existing distinctions between "express advocacy" versus "issue advocacy" and "independent expenditures" versus contributions to candidates are less clear. Citizens United does not address these distinctions, but the logic underlying the decision suggests that they may soon be revisited.

<sup>14</sup> In addition to overturning Austin, the Court dismissed arguments that independent corporate expenditures in elections for federal office give rise to corruption or its appearance (Citizens United at 41 - 45) and that the government has a compelling interest

### **Disclosure and Disclaimer Requirements**

The Court upheld the BCRA's disclosure and disclaimer requirements which were applied to the documentary (§§ 201 and 311 of the Act), holding that such requirements "may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' [Buckley v. Valeo, 424 U.S. 1, 64 (1976)] and 'do not prevent anyone from speaking,' McConnell, [540 U.S.] at 201." Citizens United, 558 U.S. at 51. Citing Buckley and McConnell, the Court held that these requirements bear a substantial relation to the government's interest in ensuring that the electorate is able to evaluate the arguments to which it is being subjected, and that Citizens United did not demonstrate that the requirements imposed a chill on the organization's (or the organization's members') speech or expression. Id. at 51 - 56.

### **EFFECT ON ALASKA LAW**

1. Under existing AS 15.13.067 (who may make expenditures in an election for candidates for elective office) and AS 15.13.135 (independent expenditures for or against candidates), only individuals, groups, and nongroup entities, as these terms are defined under AS 15.13.400, are permitted to make independent expenditures supporting or opposing candidates in elections under AS 15.13.<sup>15</sup> The terms "individual," "group," and "nongroup entity" are defined at AS 15.13.400. Together, these provisions effectively prohibit independent expenditures by for-profit corporations, and are likely to be interpreted by a court as unconstitutional in light of this decision.<sup>16</sup>

2. For-profit corporations are currently prohibited from making independent expenditures for or against candidates in elections under AS 15.13. Because of that, existing state statutes relating to (1) disclosure of expenditures, (2) limitations on expenditures, (3) identification of communications, and (4) filing of reports<sup>17</sup> under AS 15.13 do not currently account for independent expenditures and communications by for-profit corporations. Given the silence of our state statutes, and the likelihood that our existing

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in regulating corporations' independent expenditures to protect dissenting shareholders from being compelled to fund corporate political speech. (Citizens United at 46 - 47).

<sup>15</sup> Under AS 15.13.010(a), AS 15.13 applies to elections for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, and a judge seeking judicial retention, and to elections for municipal office in municipalities with a population of more than 1,000 inhabitants unless the municipality has exempted itself from the provisions of the chapter.

<sup>16</sup> These statutes remain the law for the State of Alaska. If left unchanged, will they be enforced? The state could attempt to enforce them; however, enforcement would likely be quickly curtailed once the aggrieved party petitioned the state's courts.

<sup>17</sup> See AS 15.13.040, AS 15.13.082, AS 15.13.090, and AS 15.13.110.

Representative Jay Ramras  
January 25, 2010  
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statutes will not be enforced following the Court's holding in Citizens United, there are now no limits on independent expenditures made by for-profit corporations and no statutory disclosure, identification, or reporting requirements for these expenditures.

If I may be of further assistance, please advise.

TLAB:plm  
10-035.plm



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March 29, 2010

To: Members of the Alaska Senate

RE: SB 284 (Senate Judiciary Committee)—Support

On behalf of the members of AARP in Alaska, we encourage you to support SB 284, sponsored by the Senate Judiciary Committee.

AARP believes transparency is critical to government integrity and civic engagement. Openness is a fundamental feature of democracies and governmental operations, including elections, should operate in public view.

The ability of government to respond to the concerns of citizens, promote the public interest, and retain public confidence in its fairness, competence, and relevance is dependent in large measure on adhering to policies that promote and sustain integrity.

Unfortunately, trust in government is extremely low. Whether true or not, government officials and processes are often viewed as more responsive to the concerns of moneyed special interests than those of the general public.

SB 284 will not solve the entire credibility problem. However, SB 284 will get us closer to restoring confidence in government and transparency in elections and campaigns.

SB 284 will help ensure clarity and honesty in election advertising, including requiring meaningful descriptions of who has paid for an ad.

AARP requests an "AYE" vote on SB 284.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin, Coordinator  
AARP Capital City Task Force  
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