

SB

284

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
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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.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 22, 2010

SUBJECT: Sectional summary of Senate Bill No. 284
(Work Order No. 26-LS1448\A)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard *LAB*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

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 expenditure must report 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. Amends AS 15.13.067 to allow any person who has registered under AS 15.13.050 to make an expenditure in a state election for public office.

Section 8. 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 9. 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 10. Amends language in AS 15.13.086 to conform with changes made by sec. 7 of the bill.

Section 11. 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, (4) identify the person's five largest contributors, and (5) in an election for elective office, state that the communication is not authorized or approved by a candidate.

Section 12. 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 13. Amends the language of AS 15.13. 111(a) to oblige all persons who are required to report under AS 15.13 to preserve certain records for a period of six years.

Section 14. 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 15. 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. As the chapter now reads, there is no ambiguity as to whether the chapter prohibits persons from making independent expenditures relating to a ballot proposition or question.

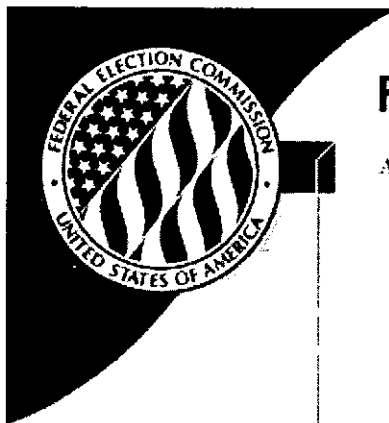
Section 16. Gives the Act an immediate effective date.

TLAB:ljw
10-121.ljw

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Special Notices on Political Ads and Solicitations

Published in October 2006



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FEDERAL ELECTION COMMISSION

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Introduction

This brochure has been developed to help clarify the rules relating to the following types of special notices:

- Disclaimer notices;
- Federal election purpose notification;
- Best efforts notifications; and
- IRS disclosure notices.

Each notice may be required (as appropriate) when persons finance communications related to federal elections or solicit funds for federal political committees. ¹ A section-by-section explanation of these rules is provided within.

Please be advised that this brochure is not intended to provide an exhaustive discussion regarding this area of the election law. The citations refer to the [Federal Election Campaign Act \(FECA\)](#), as amended by the [Bipartisan Campaign Reform Act of 2002 \(BCRA\)](#), [Federal Election Commission Regulations \(11 CFR\)](#) and [Advisory Opinions \(AOs\)](#). If you have any questions after reading the brochure, please contact the FEC:

Federal Election Commission
999 E Street, NW

Washington, DC 20463
(202) 694-1100 (local)
(800) 424-9530 (toll free)
(202) 219-3336 (for the
hearing impaired)

Disclaimer Notices

What is a Disclaimer Notice?

For the purpose of this brochure, a "disclaimer" notice is defined as a statement placed on a public communication that identifies the person(s) who paid for the communication and, where applicable, the person(s) who authorized the communication.

When is a Disclaimer Required?

Basic Rule

Political Committees

Political committees must include a disclaimer on (1) all "public communications" (defined below), (2) bulk electronic email (defined as electronic mail with more than 500 substantially similar communications) and (3) web sites available to the general public, regardless of whether the communication expressly advocates the election or defeat of a clearly identified candidate, or solicits funds in connection with a federal election (i.e., contributions for a federal candidate or federal political committee).²

Individuals and Other Persons

A disclaimer must appear on any "electioneering communication" (defined below) and on any public communication by any person that expressly advocates the election or defeat of a clearly identified candidate or solicits funds in connection with a federal election.

Application

Specific examples of public communications that would require a disclaimer include:

- Public communications coordinated with a federal candidate (i.e., in-kind contributions or coordinated party expenditures) that are paid for by a political committee or that contain express advocacy or a solicitation;
- Independent expenditures;
- Electioneering communications;
- A communication that solicits funds for a federal candidate or a federal political committee or that contains express advocacy; and
- Political committees' web sites.

Definitions

Public Communications

As defined in FEC regulations, the term "public communication" includes:

- Broadcast, cable or satellite transmission;
- Newspaper;
- Magazine;
- Outdoor advertising facility (e.g., billboard);
- Mass mailing (defined as more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period);
- Telephone banks (defined as more than 500 telephone calls of an identical or substantially similar nature within any 30-day period); or
- Any other general public political advertising. General public political advertising does not include Internet ads, except for communications placed for a fee on another person's web site

11 CFR 110.11(a).

Electioneering Communications

As defined in FEC regulations, an "electioneering communication" is a broadcast, cable or satellite communication that fulfills each of the following conditions:

- Refers to a clearly identified federal candidate;
- Is publicly distributed within 30 days before a primary election or within 60 days before a general election; and
- In the case of Congressional candidates only, is "targeted to the relevant electorate"(can be received by 50,000 or more persons in the district or state the candidate seeks to represent)

11 CFR 100.29. See also Federal Register notice 2005-29 [PDF].

Independent Expenditures

An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and is not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or their agents, or a political party committee or its agents. 11 CFR 100.16.

Coordinated Party Expenditures

Coordinated party expenditures are expenditures made by national or state party committees on behalf of their nominees in connection with the general election. Such expenditures may be coordinated with the candidate, but are reported only by the party committee that makes the expenditure. These expenditures are subject to a special monetary limit. 11 CFR 110.11(d)(1).

Exempt Party Activities

State and local party committees may engage in certain candidate-support activities without making a contribution or expenditure provided specific rules are followed. These "exempt" party activities refer to the three types of communications listed below:

- Registration and get-out-the-vote drives on behalf of the Presidential ticket;
- Campaign materials distributed by volunteers on behalf of federal candidates; and
- Certain slate cards, sample ballots and palm cards listing at least 3 candidates for public office.

11 CFR 100.80, 100.87 and 100.89; 100.140, 100.147 and 100.149; and 110.11(e).

What must the Disclaimer Say?

The actual wording of the disclaimer depends on the type of communication, as explained below. In each example, it is presumed that the ad qualifies as a "public communication" in connection with a federal election.

Messages Authorized and Financed by a Candidate

On a public communication that is authorized and paid for by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message. 11 CFR 110.11(b)(1).

Example: "Paid for by the Sheridan for Congress Committee."

Messages Authorized but Not Financed by a Candidate

On a public communication that is authorized by a candidate or his/her campaign committee, but is paid for by another person, the disclaimer notice must identify who paid for the communication and indicate that the candidate authorized the message. 11 CFR 110.11(b)(2).

Example: "Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee." ³

Messages Not Authorized by a Candidate

On a public communication that is not authorized by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message, state that it was not authorized by any candidate or candidate's committee and list the permanent street address, telephone number or World Wide Web address of the person who paid for the communication. 11 CFR 110.11(b)(3).

Example: "Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate's committee."

Coordinated Party Expenditures

Pre-nomination Period

On a public communication that is made as a coordinated party expenditure before a nominee is chosen, the disclaimer notice must identify the committee that paid for the message, but need not state whether the communication was authorized. 11 CFR 110.11(d)(1).

Example: "Paid for by XYZ State Party Committee."

Post-nomination Period

Once a candidate has been nominated for the general election, the disclaimer notice must also state who authorized the communication.

Example: "Paid for by the XYZ State Party Committee and authorized by the Sheridan for Congress Committee."

The committee that actually makes the expenditure is considered to be the person who paid for the public communication even when the committee is acting as the designated agent of a different party committee.

Exempt Party Activities

On exempt activity communications (for example, campaign materials) the disclaimer notice must identify the committee that paid for the message. 11 CFR 110.11(e).

Example: "Paid for by the XYZ State Party Committee."

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How and Where must the Disclaimer Appear?

In order to give the reader sufficient notice about the person(s) paying for or authorizing a public communication regardless of its medium, the disclaimer notice must be "clear and conspicuous" on the committee's communications, solicitations and response materials. The notice will not be considered to be "clear and conspicuous" if:

- It is difficult to read or hear; or
- The notification is placed where it can be easily overlooked.

11 CFR 110.11(c)(1).

Additional requirements are described below.

Printed Materials

On printed materials, the disclaimer notice must appear within a printed box set apart from the other contents in the communication. The print must be of a sufficient type-size to be clearly readable by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. 11 CFR 110.11(c)(2)(i), (ii) and (iii).

Example:

Paid for by the Save the Seahorses
Committee and authorized by the
McKay for Senate Committee.

As long as the disclaimer appears somewhere within the communication it does not have to appear on the front page or cover of multiple-paged documents. However, in the case of single-sided documents and billboards, the disclaimer must appear on the front. 11 CFR 110.11(c)(2)(iv).

Safe Harbor for "Clearly Readable"

The regulations contain a safe harbor that establishes a fixed, 12-point type size as a sufficient type size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. 11 CFR 110.11(c)(2)(i). Please note, disclaimers for larger communications will be judged on a case by case basis.

Safe Harbor for "Reasonable Degree of Color Contrast"

The regulations additionally provide two safe harbor examples that would comply with color contrast requirement:

- The disclaimer is printed in black on a white background; or
- The degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

11 CFR 110.11(c)(2)(iii).⁴

Packaged Materials

When communications are distributed in a package or as a group, the distributing entity must evaluate each item separately in order to determine whether a disclaimer notice is required on that item. A message or ad that would require a disclaimer notice if it were distributed separately must still display the notice when it is included in a package of materials. 11 CFR 110.11(c)(2)(v).

Example: A campaign poster is mailed with a campaign brochure and solicitation letter. A disclaimer notice must appear on each of these items.

Radio and Television Communications Authorized by the Candidate

Radio

A radio broadcast must include an audio statement that is spoken by the candidate. The statement must identify the candidate, and state that he or she has approved the communication. 11 CFR 110.11(c)(3)(i).

Television

Like radio broadcasts, televised communications must include an oral disclaimer spoken by the candidate in which the candidate identifies himself or herself and states that he or she has approved the communication. 11 CFR 110.11(c)(3)(ii).²

This disclaimer can be conveyed in one of two ways:

- A full-screen view of the candidate making the statement (11 CFR 110.11(c)(3)(ii)(A)); or
- A "clearly identifiable photographic or similar image of the candidate" that appears during the candidate's voice-over statement. (11 CFR 110.11(c)(3)(ii)(B)).

The communication must also include a "clearly readable" written statement that appears at the end of the communication "for a period of at least four seconds" with a "reasonable degree of color contrast" between the background and the disclaimer statement. 11 CFR 110.11(c)(3)(iii).

Radio and Television Messages Not Authorized by the Candidate

Radio

The disclaimer notice must include the name of the political committee or person responsible for the communication and any connected organization. Example, "ABC is responsible for the content of this advertising." 11 CFR 110.11(c)(4).

Television

The disclaimer described above must be conveyed by a "full-screen view of a representative of the political committee or other person making the statement," or a "voice-over" by the representative. 11 CFR 110.11(c)(4)(ii) and 2 U.S.C. §441d(d)(2).

The disclaimer statement must also appear in writing at the end of the communication in a "clearly readable manner" with a "reasonable degree of color" contrast between the background and the printed statement "for a period of at least four seconds." 11 CFR 110.11(c)(4).

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When is a Disclaimer Not Required?

Although the FEC recommends that disclaimer notices be included on all campaign materials, the notices are not required in the following situations.

Disclaimer Placement is Inconvenient

In situations where a disclaimer notice cannot be conveniently printed, the notice is not required. This provision affects items such as pens, bumper stickers, campaign pins, campaign buttons and similar small items. Further, a disclaimer notice is not required for communications using skywriting, clothing, water towers or other forms of advertisement where it would be impracticable to display the disclaimer notice. 11 CFR 110.11(f) (See also AO 2002-9)

Internal Corporate/Labor Communications

A disclaimer notice is not required for solicitations or communications made by a separate segregated fund or connected organization to its "restricted class." 11 CFR 110.11(f)(2).

Materials Used for Administrative Purposes Only

A disclaimer notice is not required on checks, receipts or similar items of minimal value that do not include a political message and are used only for administrative purposes. 11 CFR 110.11(f)(1)(iii).

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Additional Statements Required in Fundraising Solicitations

Federal Election Purpose Notification

In order to deposit undesignated contributions into its federal account, a federal committee must inform donors that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the Act. The committee may satisfy this requirement by including that information in its solicitation materials. 11 CFR 102.5(a)(2)(ii) and (iii).

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"Best Efforts" Notification

Under the Act and FEC regulations, political committees must report the name, address, occupation and employer of any individual who contributes more than \$200 in a calendar year (or in an election cycle, in the case of an authorized committee) (11 CFR 104.3(a)(4)). Committees must make their "best efforts" to obtain and report this information.

To satisfy the "best efforts" requirement, a political committee must include a statement on its solicitations explaining that it is required to make its best efforts to obtain and report contributor information. This statement is referred to as the "best efforts" notification; two examples are listed below:

- Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year, or
- To comply with Federal law, we must use our best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year.

If the committee does not receive the required contributor information, it must make a follow-up request within 30 days. Any contributor information provided or otherwise available to the committee must be disclosed on FEC reports. In some cases, it may be necessary for the committee to amend previous reports. 11 CFR 104.7.

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IRS Disclosure Requirements

Under the Internal Revenue Service Code (26 U.S.C. §6113), certain tax-exempt organizations that are not eligible to receive tax deductible charitable contributions, and whose gross annual receipts normally exceed \$100,000, must disclose in an "express statement (in a conspicuous and easily recognizable format)" that contributions to the organization are not deductible for Federal income tax purposes as charitable contributions. For more information, contact the IRS at (800) 829-3676, (202) 622-7352.

Safe Harbor for "Format of Disclosure Statement"

Print Medium

In the case of a solicitation by mail, leaflet, or advertisement in a newspaper, magazine or other print medium, the following four requirements are met;

- The solicitation includes whichever of the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is in at least the same size type as the primary message stated in the body of the letter, leaflet or ad;
- The statement is included on the message side of any card or tear off section that the contributor returns with the contribution; and
- The statement is either the first sentence in a paragraph or itself constitutes a paragraph.

Telephone

In the case of solicitation by telephone the following three requirements are met:

- The solicitation includes whichever of the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is made in close proximity to the request for contributions, during the same telephone call, by the telephone solicitor; and
- Any written confirmation or billing sent to a person pledging to contribute during the telephone solicitation complies with the requirements under Print Medium Solicitations.

Television

In the case of solicitation by television the following two requirements are met:

- The solicitation includes whichever the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- If the statement is spoken, it is in close proximity to the request for contributions; if the statement appears on the television screen, it is in large easily

readable type appearing on the screen for at least five seconds.

Radio

In the case of a solicitation by radio the following two requirements are met:

- The solicitation includes whichever of the following statements the organization deems appropriate:
 - "Contributions or gifts to [name of organization] are not deductible as charitable contributions for Federal income tax purposes,"
 - "Contributions or gifts to [name of organization] are not tax deductible," or
 - "Contributions or gifts to [name of organization] are not tax deductible as charitable contributions";
- The statement is made in close proximity to the request for contributions during the same radio solicitation announcement.

These safe harbors will remain in effect until further notice from the IRS. Please refer to [the IRS](#) by phone at (800) 829-3676, (202) 622-7352 for changes to these safe harbors and with any questions you might have pertaining to the safe harbors.

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FOOTNOTES:

1 This brochure serves as the small entity compliance guide to Commission regulations regarding Communications and Solicitations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

2 The FEC recommends placing disclaimer notices on all campaign materials.

3 Please note that for communications listing several candidates, the disclaimer notice may state that the message was authorized by the candidates identified in the message or, if only certain candidates have authorized it, by those candidates identified with an asterisk ([AO 2004-32](#))

4 These examples do not constitute the only ways to satisfy the color contrast requirement.

5 For additional information on broadcast advertising (e.g., radio, TV), please contact the [Federal Communications Commission](#) at (202) 418-1440 or (202) 418-7096 (for cable broadcasts).

6 The restricted class includes the executive and administrative personnel of the organization, its

stockholders, or its members (noncorporate), and their families. See [11 CFR 114.1\(j\)](#). See also 11 CFR [114.5 \(g\)](#) (1) and (2); [114.7 \(a\)](#) and (c).

This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 [et seq.](#)), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463
(800) 424-9530; (202) 694-1100
info@fec.gov
www.fec.gov

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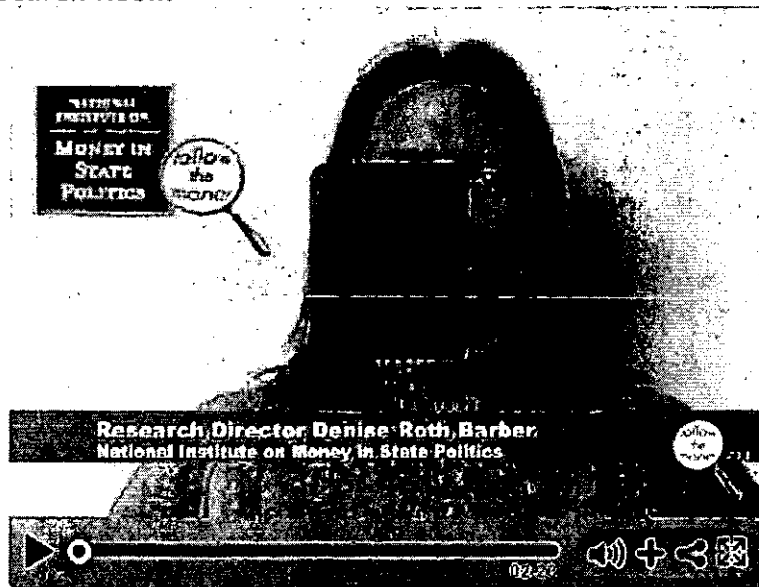
Citizens United v. Federal Election Commission
The Impacts--and Lack Thereof--on State Campaign Finance Law
by Denise Roth Barber, March 02, 2010

Revised: March 2, 2010: The "Citizens United v FEC" ruling by the U.S. Supreme Court has no effect on campaign limits in place at the state and federal levels but may effectively overturn laws in 24 states that ban or restrict corporations from funding advocacy for or against state candidates. In the 22 states that prohibit corporations from giving to candidates, individuals contributed about half of the money raised by candidates and non-individuals provided less than one-fourth. The reverse is true in the 28 states that allow corporate giving.

This publication was made possible by grants from:

- Ford Foundation*
- Foundation to Promote Open Society*
- The Pew Charitable Trusts*
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From the Research Room



See the regulations in your state here

Tutorial: Contributions vs. Independent Expenditures

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**Continue reading: Citizens United v. Federal Election Commission — Citizens United v. Federal Election Commission
-REVISED**

<http://www.followthemoney.org/press/ReportView.phtml?r=414>

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Federal Election Commission

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Commission Statement on Citizens United v. FEC

On February 5, 2010, the Commission announced that, due to the Supreme Court's decision in *Citizens United v. FEC*, it will no longer enforce statutory and regulatory provisions prohibiting corporations and labor unions from making either independent expenditures or electioneering communications. The Commission also announced several actions it is taking to fully implement the *Citizens United* decision.

In *Citizens United v. FEC*, issued on January 21, 2010, the Supreme Court held that the prohibitions in the Federal Election Campaign Act (the Act) against corporate spending on independent expenditures or electioneering communications are unconstitutional. The Supreme Court upheld statutory provisions that require political ads to contain disclaimers and be reported to the Commission. Provisions addressed by the decision are described below:

- The Court struck down 2 U.S.C. §441b, which prohibits, in part, corporations and labor organizations from making electioneering communications and from making independent expenditures—communications to the general public that expressly advocate

(continued on page 2)

Cao v. FEC

On January 27, 2010, the U.S. District Court for the Eastern District of Louisiana granted in part and denied in part the motion of Louisiana Congressman Anh "Joseph" Cao, the Republican National Committee (RNC) and the Republican Party of Louisiana (LA-GOP, formerly "RPL") (collectively, the Plaintiffs) to certify to the Fifth Circuit Court of Appeals challenges to the constitutionality of the coordinated party expenditure limits and party contribution limits. The court certified questions regarding whether the Plaintiffs had sufficient injury to create a constitutional case, whether certain coordinated expenditure and contribution limits as applied to coordinated communications violate the Plaintiffs' First Amendment rights and whether the \$5,000 limit on contributions from political parties to candidate campaigns violates a political party's First Amendment rights because it is the same limit as for political action committees and the limit is not adjusted for inflation. The district court denied certification and granted summary judgment in favor of the FEC on all of Plaintiffs' other claims.

(continued on page 3)

Comments

(continued from page 1)

the election or defeat of clearly identified federal candidates;

- The Court upheld 2 U.S.C. §441d, which requires that political advertising consisting of independent expenditures or electioneering communications contain a disclaimer clearly stating who paid for such communication; and
- The Court upheld 2 U.S.C. §434, which requires certain information about electioneering communications and independent expenditures, and the contribu-

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Communications

Greg J. Scott,
Assistant Staff Director
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Deputy Assistant Staff Director
Myles G. Martin,
Editor

111

tions received for such spending, to be disclosed to the Commission and to be made public.

The Commission is taking the following steps to conform to the Supreme Court's decision:

- The Commission will no longer enforce the statutory provisions or its regulations prohibiting corporations and labor organizations from making independent expenditures and electioneering communications;
- The Commission is reviewing all pending enforcement matters to determine which matters may be affected by the *Citizens United* decision and will no longer pursue claims involving violations of the invalidated provisions. In addition, the Commission will no longer pursue information requests or audit issues with respect to the invalidated provisions; and
- The Commission is considering the effect of the *Citizens United* decision on its ongoing litigation.

The Commission intends to initiate a rulemaking to implement the *Citizens United* opinion. It is reviewing the regulations affected by the invalidated provisions, including but not necessarily limited to the following:

- 11 CFR 114.2(b)(2) and (3), which implement the Act's prohibition on corporate and labor organization independent expenditures and electioneering communications;
- 11 CFR 114.4, which restricts the types of communications corporations and labor organizations may make to those not within their restricted class;
- 11 CFR 114.10, which permits certain qualified nonprofit corporations to use their treasury funds to make independent expenditures and electioneering communications under certain conditions;
- 11 CFR 114.14, which places restrictions on the use of corporate and labor union funds for elec-

tioning communications; and

- 11 CFR 114.15, which the Commission adopted to implement the Supreme Court's decision in *Wisconsin Right to Life, Inc. v. FEC*.

The Commission is also considering the effect of *Citizens United* on the ongoing Coordinated Communications rulemaking. 74 FR 53893 (Oct. 21, 2009). The Commission also issued a Supplemental Notice of Proposed Rulemaking (SNPRM) regarding issues presented by *Citizens United*. See page 7 for more information. The additional comment period closed on February 24, 2010. The Commission intends to hold a hearing on the Coordinated Communications rulemaking on March 2 and 3, 2010. The text of the SNPRM is available at <http://www.fec.gov/disclosure/coordcomm/2009/notice022410.pdf>.

Revisions to Commission reporting requirements, forms, instructions and electronic software may be required.

Corporations and labor organizations that intend to finance independent expenditures or electioneering communications should:

- Include disclaimers on their communications, consistent with FEC regulations at 11 CFR 110.11;
- Disclose independent expenditures on FEC Form 5, consistent with FEC regulations at 11 CFR 109.10; and
- Disclose electioneering communications on FEC Form 9, consistent with FEC regulations at 11 CFR 104.20.

The Commission notes that the prohibitions on corporations or labor organizations making contributions contained in 2 U.S.C. §441b remain in effect.

The full text of the Commission's statement is available at <http://www.fec.gov/disclosure/coordcomm/2010/20100205statement.pdf>.

Cont.
(continued from page 1)

Background

On December 4, 2008, the Plaintiffs filed an amended complaint in the U.S. District Court for the Eastern District of Louisiana challenging the constitutionality of the party expenditure provision limits at 2 U.S.C. §§441a(d)(2)-(3) as applied to their planned coordinated party expenditures. The Plaintiffs alleged that the party expenditure provision of the Federal Election Campaign Act (the Act) and the \$5,000 contribution limit at 2 U.S.C. §441a(a)(2)(A) are unconstitutional as applied to party coordinated expenditures that are not "unambiguously campaign related" (*Buckley v Valeo*, 424 U.S. 1, 81 (1976)) or "functionally identical to contributions" (*FEC v. Colo. Rep. Fed. Campaign Comm.*, 533 U.S. 431, 468 n.2 (2001)) ("*Colorado II*"). In addition, the Plaintiffs argued that the application of multiple coordinated expenditure limits for the same office is unconstitutional because it is ineffectual in preventing corruption and that the base amounts are too low. The Plaintiffs also challenged the constitutionality of the \$5,000 contribution limit on the grounds that the same limits apply to parties as to political action committees, and argued that the limit is too low and not indexed for inflation. The original complaint was filed by the Plaintiffs on November 13, 2008.

Under the Act, a national party committee and state party committees may make expenditures in connection with the general election campaigns of federal candidates that are coordinated with these candidates. 11 CFR 109.30. Coordinated party expenditures do not count against the contribution limits, but are subject to a separate set of limits. 11 CFR 109.32.

The Act provides a formula for calculating coordinated party expenditure limits. For House candidates, the coordinated party expenditure limit is \$10,000 increased by the Cost of Living Adjustment (COLA) or, in states with only one representative, the same as the Senate limit. For Senate candidates, the coordinated party expenditure limit is the greater of the number of the state voting age population multiplied by two cents and increased by the COLA, or \$20,000 increased by the COLA. For Presidential candidates, the coordinated party expenditure limit is the number of the national voting age population multiplied by two cents and increased by the COLA. 11 CFR 109.32.

District Court Decision

The district court granted in part the Plaintiffs' Motion to Certify. Four questions were found non-frivolous and certified to *en banc* Fifth Circuit Court of Appeals. The defendant's Motion for Summary Judgment was granted for all issues not certified to the Fifth Circuit.

Standing. The court found non-frivolous the question whether Plaintiffs had alleged sufficient injury to create a constitutional "case or controversy" within the judicial power of Article III. However, the court held that LA-GOP does not have standing to bring a Motion to Certify under §437h of the Act, as LA-GOP is neither a national committee of a political party nor an individual eligible to vote for President.

Unambiguously Campaign Related. The court found frivolous the Plaintiffs' arguments that several provisions of the Act are vague, overbroad or beyond Congress' authority to regulate because they allegedly restrict speech that is not "unambiguously campaign related." The provisions challenged under that theory were those that limit expenditures "in connection" with a candidate's campaign (§§441a(d)(2-3)),

limit to \$5,000 contributions from multicandidate political committees to any candidate (§441a(a)(2)(A)) and define expenditures "made in cooperation, consultation or concert" with a candidate as contributions (§441a(a)(7)(B)(i)).

Own Speech. The court found non-frivolous the Plaintiffs' argument that coordinated expenditures

(continued on page 4)

Visit the FEC's Redesigned Web Site

FEC staff recently completed a significant upgrade of the Commission's web site, www.fec.gov.

The redesigned site offers a wealth of information in a simple, clearly-organized format. Features include cascading menus that improve navigation and interactive pages that allow users to tailor content to their specific needs. Noteworthy among the new features is a search engine. This tool allows visitors to immediately access all pages on the site that contain a desired word or phrase. Another new feature, the Commission Calendar, helps users keep track of reporting deadlines, upcoming conferences and workshops, Commission meetings, comment deadlines and more.

The site also offers a robust new enforcement section that includes the Enforcement Query System, information on closed MURs, the Alternative Dispute Resolution and Administrative Fine programs and—for the first time—access to final audit reports issued by the Commission.

The Commission encourages the regulated community and the public to make use of this dynamic and interactive site by visiting www.fec.gov.

Cindy Smith

From: mdfrank@gci.net on behalf of Diane Frank [mdfrank@gci.net]
Sent: Monday, March 01, 2010 9:20 PM
To: Cindy Smith
Subject: Re: SB284 campaign expenditures
Attachments: SB 284 comments.pdf; ATT00001.htm

Cindy,

Attached are my preliminary comments on the bill. Thank you for considering them.

Mike Frank

SENTATE BILL NO. 284 COMMENTS

Section 3. Section 3, amending AS 15.13.040(d), would require a "full report of *expenditures*." However, Section 4, amended AS 15.13.040(e), would require more than just a report of "expenditures." This minor inconsistency should be corrected so that it is clear that more than just a report of expenditures will be required.

Section 4. As I understand Section 4, the bill proposes to amend current law to require corporations, unions and the like which make expenditures both report both the source of contributions and the amount of the expenditures. This is similar to a proposal made by the Brennan Center for Justice (see <http://www.brennancenter.org>) and U.S. Senator Charles Schumer for federal elections.

What is missing from Section 4 and which is in Senator Schumer's bill, however, is a requirement that the person making expenditures keep a separate account for monies that the person intends to use to make such expenditures. This separate account requirement would enhance the ability of the State to audit corporate, union and NGO accounts to ensure there are no reporting violations.

Moreover, monies used for electioneering should *not* be treated as a deductible operating expense for tax purposes. An separate account requirement would segregate those funds so that federal, State or local taxing authorities can ensure that, to the extent allowed by current or future changes in tax codes concerning the deductibility of electioneering expenses, political expenditures are not illegally deducted as operating expenses.

In Section 4 an amended AS 15.13.040(e)(3) would require that the report provide "the name of the candidate or the title of the ballot proposition or question *supported or opposed* by each expenditure and whether the expenditure is made to *support or oppose* the candidate or ballot proposition or question... ." This support or oppose language may be problematical. For example, suppose an advertisement states "Candidate X supports free abortions for teenagers. Call candidate X and tell him you disagree with his position." Is that advertisement supporting or opposing candidate X? The example shows how easily the support or oppose language might be evaded. It might be better if the reporting requirement was triggered whenever the expenditure merely mentioned the candidate's name or the title of office up for election.

A similar problem relates to the proposed amendatory language in a new AS 15.13.040(e)(5), to wit, "the aggregate amount of all contributions made to the person, if any, *for the purpose of influencing* the outcome of an election... ." How is the State to determine if the person making the expenditure had the requisite "purpose" or intent, i.e., the requisite *mens rea*? This will be very hard to determine. It might be better to say something like "the aggregate amount of all contributions made to the person, if any, and

which contributions are either authorized by the contributor or otherwise which may be used by the person to make expenditures concerning an election.”

Section 14. This Section would amend AS 15.13.135(a) to delete the following language (in caps in the text of the bill): “ONLY AN INDIVIDUAL, GROUP, OR NONGROUP ENTITY MAY MAKE AN INDEPENDENT EXPENDITURE SUPPORTING OR OPPOSING A CANDIDATE FOR ELECTION TO PUBLIC OFFICE.” I presume this deletion is intended to make AS 15.13.135(a) consistent with the holding in *Citizens United*. I urge that this deletion not be made.

AS 15.13.135(a) became law in response to a 1995 initiative, which I authored, intended to reform Alaska’s campaign finance laws. The initiative secured a place on the ballot but was taken off the ballot by Lieutenant Governor Fran Ulmer after she determined that the Legislature had passed a law substantially similar. A key provision of the initiative and new law was a ban on independent expenditures by corporations and unions in candidate (as opposed to ballot proposition) elections. *Citizens United* held that such a ban is unconstitutional, and therefore until the holding of that case is altered, the first sentence of the current AS 15.13.135(a) may, of course, not be enforced.

Citizens United, however, was a very sharply divided, extremely controversial, 5-4 decision. A change in the composition of the United States Supreme Court could easily change the holding of that case. Given the public anger about the decision and plans to challenge the decision already afoot, that change could happen in the very near future. If in the meantime, however, AS 15.13.135(a)’s ban on corporate and union independent expenditures is eliminated, a favorable change in the decision will have no impact in Alaska. If the holding of *Citizens United* is overturned, enacting a new ban would become necessary. That seems unlikely to happen unless the public forces a vote on it via the lengthy and expensive initiative process. Thus, I urge that no change be made to the first sentence of AS 15.13.135(a).

If, however, the conflict with the holding of *Citizens United* must be addressed, I suggest an amendment adding this or a similar phrase to the first sentence at the end of the sentence: “except to the extent such independent expenditures are otherwise authorized by federal law or the Alaska Constitution.”

Notice and Consent. The holding of *Citizens United* was in part based on the First Amendment right of association. But ordinarily, corporate shareholders, and union and NGO members do not associate with the corporation, union or NGO in order to pursue political ends. Shareholder and member assets should not, therefore, be used for political purposes without their consent. (I should note that the majority in *Citizens United* specifically remarked that “corporate democracy” could provide a remedy for shareholders who do not want their funds used for electioneering purposes.)

Entities intending to make independent expenditures in candidate elections should be required to notify their shareholders or members and give them an opportunity to voice their objections, either by selling their shares, resigning their membership, or otherwise

exercising whatever rights of protest they may have within the entity. This notice should be required well in advance of the election (say, 90 days). It should include adequate detail concerning the name of the candidates, the entity's intentions with respect to its advocacy concerning the candidates, and other details reasonably necessary to inform the shareholders and members. I urge that notice and consent requirements be added to SB 284.

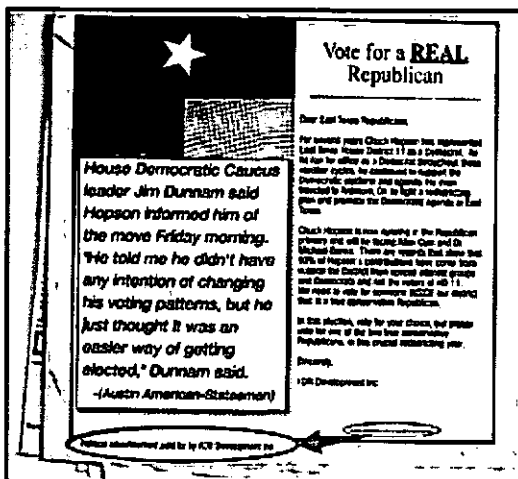
For more about the notice and consent issue, see the Brennan Center Ciara Torres-Spelliscy, *Corporate Campaign Spending: Giving Shareholder's A Voice* (Brennan Center for Justice, 1/27/2010), available at http://www.brennancenter.org/content/resource/corporate_campaign_spending_giving_shareholders_a_voice/.

Thank you for considering my comments.

THE TEXAS TRIBUNE

The First Corporate Ad

by Ross Ramsey
 March 22, 2010



The KDR Development Inc. advertisement that ran in the Panola Watchman

The first political ads bought by a corporation in Texas appeared in East Texas newspapers just weeks after the U.S. Supreme Court effectively ended the state's ban on that kind of spending.

The ads appear to mark the first instance of a corporation directly playing in a Texas election since the nation's highest court lifted a century-old ban on political spending by corporations and labor unions. That January ruling — in *Citizens United v. Federal Election Commission* — doesn't affect contributions to candidates, which remain restricted. But it does mean corporations and unions can spend money as they wish on politics and run all the ads they want, so long as they don't coordinate their efforts, messages and plans with the campaigns they're promoting or with other third-party groups that have similar political interests.

The ads in the *Jacksonville Daily Progress*, the *Tyler Morning Telegram* and the *Panola Watchman* took issue with the Republican bona fides of state Rep. Chuck Hopson of Jacksonville, a Democratic incumbent who jumped to the GOP in November and ran in a three-way race in the Republican primary this month. He got 61 percent of the vote, easily besting Michael Banks and Allan Cain.

The newspaper ads ran in Jacksonville and Tyler on the Sunday before the election and a week earlier in Panola, and they urged voters to choose anyone but Hopson. They were paid for by KDR Development Inc., a real estate company whose president, Republican Larry Durrett, lost to Hopson in 2006, when Hopson was still a Democrat. Durrett is also the president of Southern Multifoods, a Jacksonville-based company with dozens of franchised Taco Bell, KFC, Pizza Hut, A&W and Long John Silvers restaurants. The two companies are closely related, sharing addresses, officers and directors.

"I think we're on solid legal ground," Durrett said in an interview. "We checked it out every way from Sunday."

At least one paper — the *Longview News-Journal* — had reservations. "The disclaimer wasn't complete, and then we saw that it was a corporate ad," said Alan Todd, the paper's advertising director. "When we questioned it, [the buyer] pulled the ad."

Durrett wanted to run ads against Hopson and had been reading and hearing about the Supreme Court ruling on corporate politicking. He checked with a lawyer in Tyler, who sent him to a specialist in Austin, did "a significant amount of discussion about this," and then went to the papers with the ads. "My businesses do better under conservative people and not under people who aren't," he said. "There are an awful lot of folks on the Republican side of the House who aren't all that conservative, and that's an irritant." He felt the other two candidates were more conservative than Hopson.

He used corporate money for a simple reason. "You take the money out of the pocket that's got some money in there," he said.

Durrett doesn't consider Hopson's win a complete loss for his side: "If you continue to point out that people aren't as conservative as you are, it moves them to the right."

The ad has a quote on one side, and the copy on the other is standard fare for a House race, written in the form of a letter.

The quote, from the *Austin American-Statesman*: "House Democratic Caucus leader Jim Dunnam said Hopson informed him of the move Friday morning. 'He told me he didn't have any intention of changing his voting patterns, but he just thought it was an easier way of getting elected,' Dunnam said."

The letter:

Dear East Texas Republicans,

For several years Chuck Hopson has represented East Texas House District 11 as a Democrat. As he ran for office as a Democrat throughout these election cycles, he continued to support the Democratic platform and

agenda. He even traveled to Ardmore, OK to fight a redistricting plan and promote the Democratic agenda in East Texas.

Chuck Hopson is now running in the Republican primary and will be facing Allan Cain and Dr. Michael Banks. There are records that show that 90% of Hopson's contributions have come from outside the District from special interest groups and Democrats and not the voters of HD 11. We need to vote for someone INSIDE our district that is a true conservative Republican.

In this election, vote for your choice, but please vote for one of the two true conservative Republicans, in this crucial redistricting year.

Sincerely,

KDR Development Inc

Before the Supreme Court ruling, that would have been an illegal ad in Texas, purely based on the corporate funding. So long as KDR didn't work with the campaigns or with anyone else on the copy, it now appears to be the sort of direct corporate expenditure the Supremes are protecting.

"It raised some issues with us, and I asked some people in the organization to look at it," said Amy Miller, publisher of the *Daily Progress*. In the end, the paper decided to accept the ad: "It's a pre-paid political ad, and I didn't see anything wrong with it."

The ad does bear some similarities to printed mailers sent by others. Cain, for instance, used that same quote from Dunnam in a mailer that also carried the "Hopson is not conservative" theme. Former state Sen. Drew Nixon, R-Carthage, paid for ads in the race, too, using that Dunnam quote again and a chart very similar to that used in Cain's flyer. Signed by three of the four GOP county chairs in the district, it was more direct in its hit on the party-switcher: "Make no mistake, Chuck Hopson is a Democrat."

But as long as the corporation wasn't in league with anyone else, they appear to be the first example of what might be possible under the court's ruling. The Texas Ethics Commission, which regulates these things, is still working on a full opinion of this new world of campaign finance. The agency posted its first impression online right after the court issued its ruling:

"... We believe the Texas Legislature intended laws under our jurisdiction to prohibit political expenditures by corporations to the full extent allowed by the Constitution, as interpreted by the United States Supreme Court. In light of the recently issued United States Supreme Court ruling in *Citizens United v. Federal Election Commission*, it is our position that corporations are allowed to make all types of direct campaign expenditures ... It is also our

position that corporations are still prohibited from making political contributions unless specifically allowed..."

TEC now has a draft opinion in circulation — not yet voted out by its board — that goes further: "For the reasons stated in Citizens United, we cannot ... prohibit a corporation or labor organization from making a direct campaign expenditure or ... prohibit an individual or other association from making a direct campaign expenditure."

They can still block corporations and labor organizations from making contributions to candidates, but they can't do anything if those outfits want to spend money for or against the candidates without the candidates' knowledge.

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Alaska State Legislature

Chairman

State Affairs Committee

Member

Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees

Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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of Pages (including cover): 1

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Re DRAFT CS for HB 409 Version E

3/9/10 HB 409 Version E passed out of the House State Affairs Committee this morning amended. Please draft a CS with the following amendments. We request that this be in draft form only at this time so we can review amendments before ordering a final.

Conceptual Amendment #1 (Seaton) (this was the tabled R.3b amendment and it is a conceptual amendment because we are amending from the R version to the E version) Page 6 Line 13 after the word "made." *Delete the rest of Line 13 thru 17.*

Amendment #2 (Lynn)
26-LS1495\E.1

p. 4, sect 7 - ~~foreign nationals~~ indep

Amendment #3 (Lynn)
26-LS1495\E.2

p. 4, sect 8 - foreign

Amendment #4 (Lynn)
26-LS1495\E.3
Withdrawn

3/09/10 Fax to Legal
Draft new HSTA CS to HB 409 Version E

Amendment #5 as amended (Gruenberg)
26-LS1495\E.3

Conceptual Amendment #1 to Amendment #5 (Gruenberg)

Line 17 after the word "person's" use the short version of the corporate name

Line 19 after the word "top" add "3"

*p. 6, line 20
p. 7, line 8(d), line 28(f)*

Conforming Conceptual Amendment #6 (Seaton)

identifying the top 3 as opposed to "5" top contributors under the disclaimer section

p. 6, line 20

Amendment #7 as amended (Petersen)
26-LS1495\E.5

p. 7, line 19-27 (e)

Amendment #1 to Amendment #7 (Gruenberg)

Page 1 Line 10 after the word "person" *delete* the rest of **line 10 up to and including the word "person." on line 13.**

Amendment #8 (Petersen)
26-LS1495\E.6
Withdrawn

Conceptual Amendment #9 (Johnson)

Page 4 of the CS Version E Line 18 after the word "(1) anonymously," *delete* the rest of **Line 18 thru Line 27**

Friendly Amendment #1 to Conceptual Amendment #9 (Gruenberg)

Add a severability clause to every portion of the bill. That if any provision in the bill is declared unconstitutional that it will not affect the rest of the bill.

SUMMARY OF CITIZENS UNITED LEGISLATION

Introduced by Senator Charles E. Schumer & Congressman Chris Van Hollen

1. PREVENT FOREIGN INFLUENCE IN U.S. ELECTIONS

- The legislation prevents foreign governments, foreign companies and foreign nationals from influencing U.S. elections by banning corporations from spending money on U.S. elections if:
 - They have a foreign ownership of 20% or more;
 - A majority of their board of directors is foreign principals; or
 - Their U.S. operations, or their decision-making with respect to political activities, falls under the direction or control of a foreign entity, including a foreign government.

2. BAN PAY-TO-PLAY

- **Prevent Government Contractors from Spending Money on Elections.**
Government contractors would be barred from making political expenditures.
- **Prevent Corporate Beneficiaries of TARP from Spending Money on Elections.**
Corporations that received bailout funding from the federal government should not be permitted to use taxpayer money for political expenditures.

3. ENHANCE DISCLAIMERS TO IDENTIFY SPONSORS OF ADS

- **Require Corporate CEO's To Identify that they are Behind Political Ads.** If a corporation spends on a political ad, the CEO will be required to appear on camera to say that he or she "approves this message," just like candidates have to do now.
- **For Shadow Groups, Require Top Corporate Donors To Appear in Political Ads They Funded.** In order to prevent individuals and corporations from funneling money through shell groups in order to mask their activities, the legislation will include the following requirements:
 - The top funder of the advertisement must also record a stand-by-your-ad disclaimer.
 - The top five contributors to an organization for political purposes that purchases advertising will be listed on the screen at the end of advertisement.

4. ENHANCE REQUIREMENTS FOR DISCLOSURE OF POLITICAL EXPENDITURES

- The legislation ensures that the public will have full and timely disclosure of campaign-related expenditures made by corporations and labor organizations. The legislation imposes disclosure requirements that will mitigate the ability of corporate spenders to mask their electioneering activities through the use of intermediaries.

i. SETTING UP 'PAPER TRAILS' WITH THE FEC

- The legislation would require corporations, labor unions, and organizations organized under 501(c) 4, 5, or 6 laws—as well as 527 organizations—to, for the first time, establish separate “political broadcast spending” accounts to receive and disperse political expenditures.
- All funds received into these “political activities” accounts must be publicly reported to the FEC. The following information must also be disclosed:
 - Name of the individual who controls the account
 - Name of donors and transferors
 - Date of each donation and transfer in excess of \$10,000,
 - Election or name of the candidate if the donation or transfer was so designated.
- All funds disbursed from the “political activities” accounts must be publicly reported to the FEC with the following information:
 - Name of the person making the disbursement
 - Amount of each disbursement of more than \$ 200 during the required period, the election to which the disbursement is made
 - Independent Expenditure-related candidate and whether the expenditure is directed in support of or opposition to the candidate
 - Electioneering Communication-related candidate who is the subject of the communication and whether the candidate is being supported or opposed through the expenditure.
 - Certification by the CEO or the head of the entity responsible, that the independent expenditure or electioneering communication is not made in coordination with a candidate, candidate committee or party committee.

- All funds transferred from the “political activities” account for the purpose of a political expenditure, or that is not restricted for use for a political expenditure, must be publicly reported to the FEC with the following information:
 - Name of the transferor
 - Name of the recipient
 - Date and amount of the funds transferred
 - Whether the transferred funds are intended for use in a particular election or directed to a particular candidate and, if so, disclose the election and/or candidate.

ii. **PROVIDING NOTICE TO SHAREHOLDERS DIRECTLY AND THROUGH SEC FILINGS**

- All political expenditures made by a corporation should be disclosed within 24 hours on the corporation’s website with a clear link on the homepage; disclosed to shareholders directly on a quarterly basis; and comprehensively disclosed within the corporation’s annual report.

iii. **REQUIRING LOBBYISTS TO DISCLOSE THEIR ACTIVITIES**

- All registrants under the Lobbying Disclosure Act must disclose the following information:
 - Every campaign expenditure in excess of \$1000
 - Date it was received
 - Recipient
 - Name of each “covered candidate” or political party expressly identified in any electioneering communication
 - Running total of the political expenditures.

5. PROVIDE LOWEST UNIT RATE FOR CANDIDATES AND PARTIES

- If a corporation buys airtime to run ads on broadcast, cable, or satellite television that support or oppose a candidate, then that candidate and political party or political party committee is allowed to receive the lowest unit rate for that media market.
- The broadcaster must also ensure that the candidate or political entity has reasonable access to airtime. This ensures that candidates and parties are not forced to run their

advertisements at, say, 2:00 am when no one is watching, or be blocked from purchasing any advertising time at all.

6. PREVENT CORPORATIONS FROM COORDINATING THEIR ACTIVITIES WITH CANDIDATES AND PARTIES

- The legislation ensures that corporations and others are not allowed to coordinate campaign-related expenditures with candidates and parties in violation of rules that require these expenditures to be independent.
 - Current FEC rules bar corporations and unions from coordinate with candidates and parties about most ads distributed within 90 days of a House or Senate primary election or within 90 days of the general election. For Presidential contests, current FEC rules allow coordination on ads referencing a presidential candidate 120 days before a state's Presidential primary election and continuing in that state through the general election.
 - This legislation would do the following:
 - For House and Senate races, the legislation would ban coordination between a corporation or union and the candidate on ads referencing a Congressional candidate within 90 days of the *primary* through the *general* election.
 - For all federal elections, at any time before the 90- or 120-day window opens, it would ban coordination of ads between a corporation or union and the candidate when they promote, support, attack or oppose a candidate.

RCW 42.17.120

Identification of contributions and communications.

No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

[1975 1st ex.s. c 294 § 8; 1973 c 1 § 12 (Initiative Measure No. 276, approved November 7, 1972).]

RCW 42.17.510

Identification of sponsor — Exemptions.

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the materials required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization, and all electioneering communications, must include the following statement as part of the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement or communication.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

(a) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process; and

(c) Be set apart from any other printed matter.

(4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)." If the independent expenditure or electioneering communication is undertaken by a

nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period before the date of the advertisement. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(6) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(7) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

[2005 c 445 § 9; 1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1.]

Sec. 15.13.010. Applicability.

(a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800 (20), or a special municipality-wide election called for that purpose, votes to exempt its elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, nongroup entity, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

(d) This chapter does not limit the authority of a person to make contributions to influence the outcome of a voter proposition submitted to the public for a vote at a municipal election. In this subsection, in addition to its meaning under AS 15.13.065 (c), "proposition" means a municipal reclassification, proposal to adopt or amend a home rule charter, a unification proposal, a boundary change proposal, or the approval of an ordinance when approval by public vote is a requirement for the ordinance.

Sec. 15.13.030. Duties of the commission.

The commission shall

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

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

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

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

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

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

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

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

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

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

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of \$50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) 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.

(e) The report required under (d) of this section 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.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010, if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any group or nongroup entity and independently of any other individual if the expenditures

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

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

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of \$250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach \$500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach \$500.

(k) Every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of influencing the outcome of a proposition shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed \$50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed \$50 a person in amount or value; if a contribution for the fund-raising activity exceeds \$50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are \$50 a person or less in amount or value.

(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

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

Sec. 15.13.067. Who may make expenditures.

Only the following may make an expenditure in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050; and

(4) a nongroup entity that has registered under AS 15.13.050.

Sec. 15.13.082. Limitations on expenditures.

(a) A candidate or group may not make an expenditure in cash that exceeds \$100 unless the candidate, or the campaign treasurer or deputy campaign treasurer, obtains a written receipt from the person to whom the expenditure is made.

(b) A candidate, group, or nongroup entity may not make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

(c) If a candidate receives a contribution in the form of cash, check, money order, or other negotiable instrument and is subject to being reported to the commission under this chapter, the candidate may neither expend the contribution nor, in the case of a negotiable instrument, convert it to cash unless the candidate, campaign treasurer, or deputy campaign treasurer first records the following information for disclosure to the commission:

- (1) the name, address, principal occupation, and employer of the contributor; and
- (2) the date and amount of the contribution.

Sec. 15.13.084. Prohibited expenditures.

A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

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

(C) made for

(i) a billboard or sign; or

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

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

Sec. 15.13.086. Authorized makers of expenditures.

An expenditure

(1) authorized by or in behalf of a candidate may be made only by

(A) the candidate; or

(B) the candidate's campaign treasurer or a deputy campaign treasurer;

(2) authorized by AS 15.13.067 (3) by or in behalf of a group may be made only by the group's campaign treasurer.

Sec. 15.13.090. Identification of communication.

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the communication. In addition, candidates and groups may identify the name of their campaign chairperson.

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

(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

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

(3) is made for

(A) a billboard or sign; or

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

Sec. 15.13.110. Filing of reports.

(a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds \$250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds \$250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) a person who has filed a nominating petition under AS 15.25.140 - 15.25.200 to become a candidate at the general election for elective state executive or legislative office;

(3) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(4) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) - (3) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135 (a).

Sec. 15.13.111. Preservation of records.

(a) Each candidate, group, nongroup entity, or person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

(b) Information preserved under (a) of this section must be made available for inspection by the commission.

(c) A candidate for state elected office who was not elected or a person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically. Records submitted under this subsection shall be preserved by the commission for a period of six years from the date of the election for which the information was required to be reported.

Sec. 15.13.135. Independent expenditures for or against candidates.

(a) Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate for election to public office. An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of \$250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090; and

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

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

Sec. 15.13.140. Independent expenditures for or against ballot proposition or question.

(a) This chapter does not prohibit a person from making independent expenditures in support of or in opposition to a ballot proposition or question.

(b) An independent expenditure for or against a ballot proposition or question

(1) shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter; and

(2) may not be made if the expenditure is prohibited by AS 15.13.145.

Sec.15.13.400. Definitions

In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(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;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(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;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

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

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(9) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(10) "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;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

(14) "person" has the meaning given in AS 01.10.060, and includes a labor union, nongroup entity, and a group;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation.

Chapter 15.15. ELECTIONS AND BALLOTS



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Life After *Citizens United*

Updated March 1, 2010

The U.S. Supreme Court's January 21, 2010, ruling in *Citizens United v. FEC* is certain to have a profound effect on the laws governing corporate political activity in nearly half the states. The court ruled that the federal government may not prohibit direct corporate and union spending in advertising for candidate elections. While the ruling does not directly affect state laws, there are at least 23 states that currently prohibit or restrict corporate and union spending on candidate elections. It is very likely that these states will act to either repeal or re-write these laws, or face legal challenge under the new standard set by *Citizens United*. Furthermore, it is likely that states will elect not to enforce these laws from this point forward, which will radically change the political landscape as we head into the 2010 elections. It is important to note that the *Citizens United* decision does not strike down bans on corporate and union contributions to candidates, which currently exist in 23 states. Only the ban on direct corporate and union spending on campaign advertising is addressed by this decision.

States Respond to *Citizens United*

Connecticut, North Dakota, Ohio, Pennsylvania -- legislators and state officials are reviewing the case and have not yet decided how to proceed.

Alaska -- The Attorney General issued an opinion on February 22, stating that Alaska's ban on corporate and union independent expenditures are likely unconstitutional in view of *Citizens United*. These bills include HB 358, HB 401, HB 409, and SB 284. All would include independent expenditures by corporations and unions in the current disclosure requirements, and clarify attribution requirements for advertisements.

Arizona - SB 1444, introduced on February 16, 2010, would require corporations and labor unions that make independent expenditures in candidate campaigns to register and file disclosure reports. HB 2788 is a companion bill.

Colorado governor Bill Ritter has asked the state's supreme court to evaluate the constitutionality of two provisions of the state's constitution that appear to be directly affected by *Citizens United*. Also, the state Republican Party has announced its intention to file suit against Colorado's law. It is possible that the suit could challenge a broader scope of the law than the two sections that are affected by *Citizens United*.

Iowa -- the director of the Ethics and Campaign Disclosure Board has sent an e-mail to legislators telling them that *Citizens United* effectively overturns Iowa law. SF 2354, introduced on February 15, 2010, requires corporations to obtain permission from a majority of their shareholders prior to making an independent expenditure, requires corporations to report their independent expenditures to the Ethics and Campaign Disclosure Board, prohibits coordination between candidates and corporations, and requires certain attributions on corporate-funded advertisements.

Maryland -- HB 616, introduced on February 3, 2010, would require stockholder approval and public disclosure of corporate independent expenditures in excess of \$10,000. HB 690 and SB 691 would prohibit government contractors from making independent expenditures. HB 986 and SB 570 would require board of director and stockholder approval for corporate independent expenditures, and would prohibit the distribution of material that is not true. HB 1029 and SB 543 would establish disclosure requirements for corporate independent expenditures. SB 601 would prohibit corporate contributions to candidates and corporate-funded independent expenditures. HB 1225 would require that corporate-sponsored ads include an attribution statement.

Michigan -- the secretary of state has posted SF a detailed description of how *Citizens United* affects the state, including an FAQ section.

Minnesota -- SF 2353, introduced on February 4, 2010, would repeal the ban on independent expenditures by corporations.

Montana -- the attorney general has said the state's ban on corporate expenditures will stay in place until it is challenged.

North Carolina -- the executive director of the State Board of elections has said that the law appears to be unenforceable, but they are still working to understand the full meaning of the decision.

Oklahoma -- the Ethics Commission is working on amendments to change and remove the relevant portions of state rules.

South Dakota - SB 165, which was deferred to the 41st legislative day (effectively killing the bill) on February 10, 2010, would have prohibited corporations from making political expenditures without shareholder approval.

Tennessee -- HB 3587 and SB 3118, introduced on January 27, 2010, and HB 3626 and SB 3303, introduced on January 28, would establish disclosure and attribution requirements for corporate-funded independent expenditures. HB 3182 and SB 3198 (introduced on January 27, 2010), HB 3714 and SB 3664 (introduced on January 28), HB 3715 and SB 3633 (introduced on January 28), and SB 3797 (introduced on January 28) would prohibit foreign corporations from using funds to aid either in the election or defeat of any candidate for office. Companion bills HB 3713 and SB 3672, and SB 3798, all introduced January 28, would create a Class B misdemeanor for the use of corporate funds to aid in the election or defeat of a judicial candidate.

West Virginia - HB 4647, introduced on February 22, 2010, repeals the ban on corporate express advocacy and applies detailed disclosure requirements for money spent by corporations on political advertising.

Wisconsin -- the Senate passed SB 43 just two days before the release of the Citizens United decision. This bill would ban corporate and union funding of electioneering bans and require greater disclosure. The bill's sponsors say they are hoping to salvage the disclosure portions of the bill. Also, the Government Accountability Board is considering rules that would require greater disclosure. SB 540, introduced February 17, 2010, repeals Wisconsin's ban on corporate independent expenditures. It also requires a corporation to file documentation of a vote of shareholders taken within the past two years approving campaign expenditures before making such an expenditure.

Wyoming -- HB 68, which would repeal the ban on independent expenditures by corporations, is pending in the Legislature.

State Bans on the Use of Corporate and Union Treasury Funds for Campaign Advertising

State	Summary of Ban & Cite
Alabama	Corporations cannot fund ads directly under their own name, but must pay for them thru a PAC; corporations cannot contribute to a PAC (NOTE: this opinion applied specifically to spending on ads for/against referenda; not entirely clear that it applies to ads for/against candidates too) (AG Opinion 82-088; conversation with SOS staff on 1/25/10) (<u>§10-2A-70 and 10-2A-70.1</u>)
Alaska	Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate (the definitions of these terms exclude corporations and unions) (<u>§15.13.067, 15.13.135</u>)
Arizona	It shall be unlawful for any corporation, organized or doing business in this state, to make any contribution of money or anything of value for the purpose of influencing any election or official action. (<u>Const. Art. 14, §18</u>) It is unlawful for a corporation, a limited liability company, or a labor organization to make any contribution of money or anything of value for the purpose of influencing an election (<u>§16-919</u>) State law has a specific list of corporate expenditures that are not considered to be political contributions prohibited by law, and advertising for/against candidates is not included in this list (<u>§16-920</u>)
Colorado	It shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political party, and to make expenditures expressly advocating the election or defeat of a candidate; except that a corporation or labor organization may establish a political committee or small donor committee which may accept contributions or dues from employees, officeholders, shareholders, or members. (<u>Const. Art. XXVIII, §3(4)</u>) Notwithstanding any section to the contrary, it shall be unlawful for a corporation or labor organization to provide funding for an electioneering communication; except that any political committee or small donor committee established by such corporation or labor organization may provide funding for an electioneering communication. (<u>Const. Art. XXVII, §6(2)</u>)

Connecticut	No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. (<u>§9-613</u>)
Iowa	It is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office (<u>§68A.503</u>)
Kentucky	No corporation organized or authorized to do business in this state or in another state shall, by itself or by or through an officer, agent, attorney, or employee, subscribe, give, procure or furnish, or afterwards reimburse or compensate in any way any person who has subscribed, given, procured, or furnished, any money, privilege, favor, or other thing of value to any political or quasi-political organization, or any officer or member thereof, to be used by such organization for the purpose of aiding, assisting, or advancing any candidate for public office in this state in any way whatever. (<u>§121.035</u>)
Massachusetts	No corporation carrying on the business of a bank, trust, surety indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party. (Ch. 55 §8)
Michigan	A corporation, joint stock company, domestic dependent sovereign, or labor organization shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of a contribution pursuant to section 4(3)(a). (<u>§169.254</u>)
Minnesota	A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate. (<u>§221B.15(3)</u>)
Montana	A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party. (<u>§13-35-227</u>)
North Carolina	No prohibited source may make any disbursement for the costs of producing or airing any electioneering

	<p>communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. (<u>§163-278.82</u>)</p> <p>The term "prohibited source" means any corporation, insurance company, labor union, or professional association. (<u>§163-278.80(4)</u>)</p> <p>...It shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly: (1) To make any contribution to a candidate or political committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate (<u>§163-278.19(a)(1)</u>)</p>
North Dakota	<p>A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution to aid any candidate for public office or for nomination to public office. (<u>§16.1-08.1-03.3</u>)</p>
Ohio	<p>No corporation, no nonprofit corporation, and no labor organization, directly or indirectly, shall pay or use, or offer, advise, consent, or agree to pay or use, the organization's money or property for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee including a political action committee of the corporation or labor organization, a legislative campaign fund, or any organization that supports or opposes any such candidate, or for any partisan political purpose.. (<u>§3599.03</u>)</p> <p>No person shall make, during the thirty days preceding a primary election or during the thirty days preceding a general election, any broadcast, cable, or satellite communication that refers to a clearly identified candidate using any contributions received from a corporation or labor organization. (<u>§3517.1011(H)</u>)</p>
Oklahoma	<p>A corporation or labor organization shall not make a contribution or an expenditure or an independent expenditure to, or for the benefit of, a candidate or committee in connection with an election or for any electioneering communication. (Tit. 74, Ch. 62, §257:10-1-2(d)(2))</p>
Pennsylvania	<p>It is unlawful for any National or State bank, or any corporation, incorporated under the laws of this or any other state or any foreign country or any unincorporated association, except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever except in connection with any question to be voted on by the electors of this Commonwealth. (Section 1633 25 P.S. §3253)</p>
Rhode Island	<p>It shall be unlawful for any corporation, whether profit or non-profit, domestic corporation or foreign corporation or other business entity to make any campaign contribution or expenditure to or for any candidate, political action committee, or political party committee, or for any candidate, political action committee, or political party</p>

	committee to accept any campaign contribution or expenditure from a corporation or other business entity. (<u>§17-25-10.1(h)</u>)
South Dakota	No organization may make a contribution to a candidate committee, political action committee, or political party or make an independent expenditure expressly advocating the election or defeat of a candidate. (<u>§12-27-18</u>) "Organization," any business corporation, limited liability company, nonprofit corporation, limited liability partnership, limited partnership, partnership, cooperative, trust, business trust, association, club, labor union, collective bargaining organization, local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership, trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state, any entity organized in a corporate form under federal law or the laws of this state, or any group of persons acting in concert which is not defined as a political committee or political party in this chapter (<u>§12-27-1(16)</u>)
Tennessee	It is unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever. (<u>§2-19-132(a)</u>)
Texas	A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter. (Elec. Code <u>§253.094</u>)
West Virginia	Notwithstanding any provision of section two-b of this article, no officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may pay, give, lend or authorize to be paid, given or lent any money or other thing of value belonging to the corporation for the purpose of expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, to any candidate, financial agent, political committee or other person. No person may solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation. (<u>§3-8-8</u>)
Wisconsin	No foreign or domestic corporation, or association may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum. (<u>§11.38</u>)
Wyoming	Except as otherwise provided in this section, no organization of any kind including a corporation, partnership, trade union, professional association or civic, fraternal or religious group or other profit or nonprofit entity except a political party, political action committee or candidate's campaign committee organized under W.S. 22-25-101, directly or indirectly through any officer, member, director or employee, shall contribute funds, other items of value or election assistance to aid, promote or prevent the nomination or election of any candidate or group of

_____ candidates or to aid or promote the interests, success or
defeat of any political party. (§22-25-102)

Source: National Conference of State Legislatures, January 2010

For More Information

For more information on campaign finance laws in the states, visit NCSL's [Campaign Finance page](#) or contact [Jennie Drage Bowser](#) in NCSL's Denver office at 303-364-7700.

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The Washington Post

Poll: Large majority opposes Supreme Court's decision on campaign financing

Washington Post Staff Writer

By Dan Eggen

Wednesday, February 17, 2010; 4:38 PM

Americans of both parties overwhelmingly oppose a Supreme Court ruling that allows corporations and unions to spend as much as they want on political campaigns, and most favor new limits on such spending, according to a new Washington Post-ABC News poll.

Eight in 10 poll respondents say they oppose the high court's Jan. 21 decision to allow unfettered corporate political spending, with 65 percent "strongly" opposed. Nearly as many backed congressional action to curb the ruling, with 72 percent in favor of reinstating limits.

The poll reveals relatively little difference of opinion on the issue among Democrats (85 percent opposed to the ruling), Republicans (76 percent) and independents (81 percent).

The results suggest a strong reservoir of bipartisan support on the issue for President Obama and congressional Democrats, who are in the midst of crafting legislation aimed at limiting the impact of the high court's decision.

"If there's one thing that Americans from the left, right and center can all agree on,

it's that they don't want more special interests in our politics," Sen. Charles Schumer (D-N.Y.), who is spearheading the legislative effort, said in a statement after the poll was released Wednesday.

"We hope we can get strong and quick bipartisan support for our legislation, which passes constitutional muster but will still effectively limit the influence of special interests."


Under legislation being drafted by Schumer and Rep. Chris Van Hollen (D-Md.), companies with foreign ownership or federal contracting ties would be limited in their ability to spend corporate money on elections.

The lawmakers also want to require companies to inform shareholders about political spending; to mandate special

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Freedom of speech: Who's paying for it?

The following editorial appeared in the *Philadelphia Inquirer*:

A proposal that would make it easier to find out who is paying for political ads in federal elections is needed after the damage caused by a recent Supreme Court ruling.

The measure from Democrats would require corporations, unions, and advocacy groups, now freed from restrictions against spending on individual races, to stand up for their ads by clearly identifying who paid for them.

Groups running ads for or against a candidate would be required to report their donors to the Federal Election Commission. They'd also need to identify the top five donors in the advertising. And, in some cases, a corporate CEO would have to appear on camera to say that he or she approves "this message," just as candidates do.

These proposed rules could be, and should be, in place in time for the general election this year.

This action is a necessary response to the Supreme Court's 5-4 ruling last month that allows corporations to spend money directly on political campaigns to advocate for or against specific candidates. Election-law loopholes that existed before the ruling would enable corporations now to fund campaign ads without disclosing who paid for them.

The impact of the court's decision isn't hard to imagine. The future could look a lot more like the current mysterious TV ad urging Sens. Bob Casey, D-Pa., and Arlen Specter, D-Pa., to vote against a bill that would regulate financial institutions.

This scare tactic calls the legislation a "new \$4 trillion

bailout for banks," although the bill is actually an attempt to reform Wall Street and create a new agency to protect consumers of financial products.

The ad was funded by something called the "Committee for Truth in Politics," a shadowy group that refuses to disclose any details of its spending to the FEC. It was created by a Republican operative in North Carolina. But it's impossible to tell from the ad itself who is paying for it, let alone for viewers to evaluate its substance.

The Supreme Court has allowed third parties to virtually take over individual elections with unlimited spending. The unfortunate fact is that there's very little Congress can do to control the new flood of money that corporations and unions can pour into campaigns.

But lawmakers can at least require these players to disclose their activities fully. That will help audiences judge for themselves the motivations behind such advertising.

Legislation sponsored by Sen. Charles Schumer, D-N.Y., and Rep. Chris Van Hollen, D-Md., would require corporations to disclose political expenditures on their Web sites within 24 hours, and to inform shareholders quarterly.

There should be bipartisan support for their proposal. A new Washington Post-ABC News poll found that 85 percent of Democrats and 76 percent of Republicans oppose the Supreme Court's decision, and 72 percent of those polled favor new campaign-finance limits.

The court undermined decades of sensible election law, and the damage can't be easily undone. Greater transparency is the minimum required to start picking up the pieces of this harmful ruling.

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Our view: Full disclosure**Lawmakers offer swift response to Supreme Court ruling***(02/20/10 18:21:43)*

On Thursday, Jan. 21, the United States Supreme Court ruled that corporations and unions can spend freely to support or oppose a candidate for federal office right up to Election Day. On Friday, Feb. 19, lawmakers in the Alaska Legislature proposed bills that would require strict disclosure and disclaimer statements on such advertising.

Well done.

Sen. Hollis French, Rep. Les Gara and Rep. Scott Kawasaki led the way with this rapid response to the court's decision in *Citizens United v. Federal Elections Commission*. They're also backing a long-term response aimed at overturning the court's decision. That legislation would deny the status of personhood to corporations for the purpose of influencing elections. First, the rapid response.

STAND UP AND BE COUNTED

Identical bills in the House and Senate would require all "persons," the legal standing of corporations affirmed by the court's decision, to disclose in detail to the Alaska Public Offices Commission all contributions and expenditures on behalf of or against a candidate, a full list of the corporate officers and directors if applicable and the name of the ballot measure or candidate addressed.

In addition, any campaign advertising would have to include the "person's" principal officer and title, the address of the business and the names of the "person's" top five contributors to the campaign.

The disclaimer would have to make clear to anyone reading, hearing or viewing a campaign ad that the candidate in question does not authorize or endorse the ad.

These laws would become effective in Alaska immediately upon passage -- if they're passed this session, we'd keep any corporate and union spending right out in the light for the 2010 primary and general elections.

Disclosure must be an absolute in Alaska politics. We've had experience of bogus front groups masking large amounts of money aimed to help or hurt candidates and ballot initiatives. While the court's ruling left federal disclosure rules intact, it

left Alaska open to nondisclosure because we didn't allow corporations to directly support or oppose candidates; hence we had no disclosure rules in place when the justices opened the door to corporate giving.

The message and the law needs to be strong and clear: If you want to participate in Alaska campaign politics, stand up and be counted -- by name, by number, by affiliation and by amount. We want to know who you are, how many you are, who you're with and how much you're contributing.

That way we can figure out where your interests lie -- and where the candidate you're backing may stand.

If you want anonymity, stay out of the game. Alaska politics should be secret in one place -- the voting booth.

These disclosure and disclaimer bills, Senate Bill 284 and House Bill 358, deserve expedited committee hearings and swift passage. They'll keep Alaska politics open and the political players out front where they belong.

TAKING ON THE COURT

The same lawmakers are backing short bills (Senate Bill 285, House Bill 359) that say simply that corporations are not persons when it comes to election spending. The aim here is to restore the authority of the federal government and the states to place limits on corporate power over elections and candidates.

The reason is simple. The largest corporations have enormous resources. And the plain truth -- the "common sense" referred to by Justice John Paul Stevens in his dissent from the January ruling -- is that effective free speech in a modern election is not free.

Thus, the organizations with the most money buy the most speech. With the court's ruling, that's more likely than ever before. Corporate interests could dominate radio, television and print advertising and have the power to drown out dissenting voices. Candidates -- despite any disclaimers -- could find themselves ever more beholden to corporate interests that outspend their own campaigns and claim credit for their victories.

A healthy representative democracy limits such power.

Given the Supreme Court's decision, such a law likely would be challenged. That's the idea. The sponsors want the court to rethink the Citizens United case.

Sen. French said these bills will take more time and are part of a national chorus of opposition to the court's ruling. Alaska's voice should be clear in that chorus. The court's January ruling is the law of the land for now. That's all the more reason to get tough disclosure laws on the books.

BOTTOM LINE: The Legislature should waste no time approving tough disclosure laws -- and provide the means to enforce them.

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AMENDMENT # 1

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 284(JUD), Draft Version "E"

1 Page 4, following line 5:

2 Insert a new bill section to read:

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

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

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

8 (2) "officer" means a president, vice president, secretary, or treasurer;
9 principal financial officer, or comptroller of a corporation, or any person routinely
10 performing functions similar to those of a president, vice president, secretary, or
11 treasurer, principal financial officer, or comptroller with respect to any organization."
12

13 Renumber the following bill sections accordingly.

AMENDMENT #2

OFFERED IN THE SENATE BY SENATORS FRENCH AND COGHILL
TO: CSSB 284(JUD), Draft Version "E"

1 Page 5, line 17, through page 6, line 4:

2 Delete all material and insert:

3 "Sec. 15.13.090. Identification of communication. (a) All communications
4 shall be clearly identified by the words "paid for by" followed by the name and
5 address of the person [CANDIDATE, GROUP, NONGROUP ENTITY, OR
6 INDIVIDUAL] paying for the communication. In addition, a person shall clearly

7 (1) provide the person's address or the person's principal place of
8 business;

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

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

11 (B) a statement from the principal officer approving the
12 communication; and

13 (C) identification of the name and city and state of
14 residence or principal place of business, as applicable, of each of the
15 person's five largest contributors under AS 15.13.040(e)(5), if any, during
16 the 12-month period before the date of the communication

17 [CANDIDATES AND GROUPS MAY IDENTIFY THE NAME OF THEIR
18 CAMPAIGN CHAIRPERSON]."

19 Page 6, line 16:

20 Delete "(a)(2)(C)"

21 Insert "(a)(1)"

22

23 Page 6, line 17:

1 Delete "(a)(2)(D)"

2 Insert "(a)(2)(C)"

3

4 Page 6, line 26:

5 Delete "AS 15.13.090(a)(2)(D)"

6 Insert "AS 15.13.090(a)(2)(C)"

AMENDMENT #3

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 284(JUD), Draft Version "E"

1 Page 5, line 24, following "(2)":

2 Insert "except as provided by (d) of this section,"

3

4 Page 6, line 15:

5 Delete "a new subsection"

6 Insert "new subsections"

7

8 Page 6, line 17, following "section,":

9 Insert "a communication that includes a print or video component must have"

10

11 Page 6, lines 17 - 18:

12 Delete "must be read, in a manner that is easily heard, or"

13

14 Page 6, lines 19 - 21:

15 Delete ", or, in a communication that is transmitted by a method that includes both
16 audio and video components, be read in a manner that is easily heard and placed in the
17 communication so as to be easily discernable"

18

19 Page 6, following line 26:

20 Insert a new subsection to read:

21 "(d) Notwithstanding the requirements of (a)(2)(A) - (D) of this section, in a
22 communication transmitted through radio or other audio media and in the
23 communication that includes an audio component, the following statement or

1 statements, as applicable, must be read in a manner that is easily heard:

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

3 I am (name and, if applicable, title of the principal officer of the
4 person) and I approve this message.

5 The top contributors of (person's name) are (the name of the largest
6 contributors to the person under AS 15.13.090(a)(2)(D))."

AMENDMENT #5

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 284(JUD), Draft Version "E"

1 Page 1, line 4, following "campaigns;":

2 Insert "prohibiting certain expenditures in state election campaigns;"

3

4 Page 5, following line 16:

5 Insert a new bill section to read:

6 **** Sec. 11.** AS 15.13.084 is amended by adding a new subsection to read:

7 (b) A person that is owned or controlled, in any part, by a foreign national
8 may not make an expenditure. In this subsection, "foreign national" includes

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

11 (2) a foreign government, a political subdivision of a foreign
12 government, a official, agent, or representative of a foreign government, and an
13 agency, corporation, or instrumentality of a foreign government or of a political
14 subdivision of a foreign government;

15 (3) a person outside of the United States, unless it is established that
16 the person is an individual and a citizen of and domiciled in the United States, or that
17 the person is not an individual and is organized under or created by the laws of the
18 United States or of any state or other place subject to the jurisdiction of the United
19 States and that the person's principal place of business is in the United States;

20 (4) a partnership, association, corporation, organization, or other
21 combination of persons organized under the laws of or having its principal place of
22 business in a foreign country; or

23 (5) a domestic subsidiary of an entity described in (2) - (4) of this

1 subsection or a domestic corporation controlled by an entity described in (2) - (4) of
2 this subsection, if that entity finances, participates in, or selects a person who
3 participates in the making of a contribution or an expenditure of the domestic
4 subsidiary or domestic corporation."

5

6 Renumber the following bill sections accordingly.

LEGAL SERVICES

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MEMORANDUM

March 17, 2010

SUBJECT: Amendments E.4 and E.5 to CSSB 284(JUD)
(Work Order No. 26-LS1448\E)

TO: Senator Bill Wielechowski
Attn: Shelly Morgan

FROM: Alpheus Bullard *TAB*
Legislative Counsel

This memorandum accompanies the amendments described above.

Amendment E.4

Amendment E.4 prohibits a foreign national from making directly, or indirectly, a contribution or expenditure in connection with a state election.

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.¹ Because 2 U.S.C. 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and

¹ See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

federal regulation where none clearly exists." Additionally, "[w]here coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.

There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .

Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .

Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office."); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign contributions and expenditures in campaigns for state office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility. Proposed AS 15.13.068(c) is an attempt to avoid conflicts with federal law as much as possible, but it may not succeed.

Amendment E.5

Amendment E.5 prohibits a person that is owned or controlled, in any part, by a foreign national from making an expenditure in connection with a state election. This amendment raises significant First Amendment issues. Given that that federal law already prohibits foreign nationals from directly or indirectly making contributions or expenditures in connection with a state election, I don't know what compelling state interest would serve as justification for such a prohibition. Because any large publicly traded domestic corporation is likely to have some foreign shareholders, a court is likely to interpret such a provision, if enacted, as an indirect prohibition against independent expenditures made by these persons, a violation of the First Amendment under Citizens United v. Federal Election Commission, 558 U.S. ____ (2010).

Because the amendment applies only to persons that are owned or controlled in some part by foreign nationals, whether the ownership interest be a majority interest or a de minimus minority interest, the amendment also raises equal protection issues. Alaska evaluates equal protection claims using a sliding scale.² There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."³ In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Under the amendment, a domestic corporation with .005 percent foreign ownership, in which a foreign national or nationals are unable to exert any meaningful control, would be treated differently from a publicly traded corporation that, by chance, has no shares held by foreign nationals. A court is unlikely to interpret this disparate treatment of domestic corporations as reasonable, and I don't know what state interest could be articulated as justification for such a prohibition.

TLAB:plm
10-150.plm

Enclosures

² Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

³ Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

26-LS1448E
Bullard
3/15/10

CS FOR SENATE BILL NO. 284(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY 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; and providing for an effective date."

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

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

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

12 * **Sec. 2.** AS 15.13.030 is amended to read:

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

14 (1) develop and provide all forms for the reports and statements

1 required to be made under this chapter, AS 24.45, and AS 39.50;

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

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

9 (4) compile and maintain a current list of all filed reports and
10 statements;

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (4) the name and address of each officer and director, when
13 applicable;

14 (5) the aggregate amount of all contributions made to the person,
15 if any, for the purpose of influencing the outcome of an election; for all
16 contributions to the person that exceed \$100 in the aggregate in a year, the date
17 of the contribution and amount contributed by each contributor; and for a
18 contributor

19 (A) who is an individual, the name, address, principal
20 occupation, and employer of the contributor; or

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

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

27 (h) The provisions of (d) of this section do not apply to one or more
28 expenditures made by an individual acting independently of any other person
29 [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF ANY OTHER
30 INDIVIDUAL] if the expenditures

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

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

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

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

6 * **Sec. 7.** AS 15.13 is amended by adding a new section to read:

7 **Sec. 15.13.052. Independent expenditures; political activities accounts.** (a)
8 Before making an independent expenditure in support of or in opposition to a
9 candidate or before making an independent expenditure in support of or in opposition
10 to a ballot proposition or question, each person other than an individual, candidate, or
11 nongroup entity with an annual operating budget of \$250 or less, shall establish a
12 political activities account. The political activities account may be a separate account
13 in the person's general treasury. The political activities account must be administered
14 using generally accepted accounting principles. All funds used by the person to make
15 independent expenditures must be drawn from the person's political activities account.

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

18 (c) Each person who has established a political activities account under this
19 section shall preserve all records necessary to substantiate the person's compliance
20 with the requirements of this section for each of the six preceding years.

21 * **Sec. 8.** AS 15.13.067 is amended to read:

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

25 (1) the candidate;

26 (2) an individual;

27 (3) a group that has registered under AS 15.13.050; and

28 (4) a nongroup entity that has registered under AS 15.13.050.

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

30 (b) A person, other than an individual exempt from reporting under
31 AS 15.13.040(h), [CANDIDATE, GROUP, OR NONGROUP ENTITY] may not

1 make an expenditure unless the source of the expenditure has been disclosed as
2 required by this chapter.

3 * **Sec. 10.** AS 15.13.084 is amended to read:

4 **Sec. 15.13.084. Prohibited expenditures.** A person may not make an
5 expenditure

6 (1) anonymously, unless the expenditure is

7 (A) paid for by an individual acting independently of any
8 **person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF
9 ANY OTHER INDIVIDUAL];

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

12 (C) made for

13 (i) a billboard or sign; or

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

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

17 * **Sec. 11.** AS 15.13.090 is amended to read:

18 **Sec. 15.13.090. Identification of communication.** (a) All communications
19 shall be clearly identified by the words "paid for by" followed by the name and
20 address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR
21 INDIVIDUAL] paying for the communication. In addition,

22 **(1) candidates and groups may identify the name of their campaign**
23 **chairperson; and**

24 **(2) a person other than a candidate, an individual, or a political**
25 **party shall clearly**

26 **(A) identify the person's principal officer and the officer's**
27 **title;**

28 **(B) include a statement from the principal officer**
29 **approving the communication;**

30 **(C) provide the address of the person's principal place of**
31 **business; and**

1 (D) identify the name and city and state of residence or
2 principal place of business, as applicable, of each of the person's five
3 largest contributors under AS 15.13.040(e)(5), if any, during the 12-month
4 period before the date of the communication.

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

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

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

11 (3) is made for

12 (A) a billboard or sign; or

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

15 * Sec. 12. AS 15.13.090 is amended by adding a new subsection to read:

16 (c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable,
17 (a)(2)(D) of this section, the following statement or statements must be read, in a
18 manner that is easily heard, or placed in the communication so as to be easily
19 discernable, or, in a communication that is transmitted by a method that includes both
20 audio and video components, be read in a manner that is easily heard and placed in the
21 communication so as to be easily discernable:

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

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

27 * Sec. 13. AS 15.13.110 is amended by adding a new subsection to read:

28 (g) An independent expenditure report required under AS 15.13.040(e) shall
29 be filed with the commission not later than 10 days after an independent expenditure
30 has been made. However, an independent expenditure that exceeds \$250 and that is
31 made within nine days of an election shall be reported to the commission not later than

1 24 hours after the expenditure is made.

2 * **Sec. 14.** AS 15.13.111(a) is amended to read:

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

8 * **Sec. 15.** AS 15.13.135 is amended to read:

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

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

22 (1) shall comply with AS 15.13.090; and

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

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

28 * **Sec. 16.** AS 15.56.014(a) is amended to read:

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

31 (1) knowingly circulates or has written, printed or circulated a letter,

1 circular, or publication relating to an election, to a candidate at an election, or an
2 election proposition or question without the name and address of the author appearing
3 on its face;

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

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

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

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

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

20 * Sec. 17. AS 15.13.140(a) is repealed.

21 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

Redraft w/ language from lines 1-12
and accompanying numbering
retain deletion lines 20-21

26-LS1448R.1
Kurtz/Bullard
3/15/10

AMENDMENT #3

OFFERED IN THE SENATE

BY SENATOR ^{French} COGHILL

TO: CSSB 284(JUD), Draft Version "R"

1 Page 5, line 18, through page 6, line 7:

2 Delete all material and insert:

3 "Sec. 15.13.090. Identification of communication. (a) All communications
4 shall be clearly identified by the words "paid for by" followed by the name and
5 address of the person [CANDIDATE, GROUP, NONGROUP ENTITY, OR
6 INDIVIDUAL] paying for the communication. In addition, a person shall clearly

7 (1) provide the person's address, or the address of the person's
8 principal place of business;

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

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

11 (B) a statement from the principal officer approving the
12 communication; and

13 (C) the name and city and state of residence or principal
14 place of business, as applicable, of each of the person's three largest
15 contributors under AS 15.13.040(e)(5), if any, during the 12-month period
16 before the date of the communication; and

17 (3) for a candidate, include

18 (A) the name of the candidate; and

19 (B) a statement from the candidate approving the
20 communication [CANDIDATES AND GROUPS MAY IDENTIFY THE
21 NAME OF THEIR CAMPAIGN CHAIRPERSON]."
22

23 Page 6, lines 19 - 20:

1 Delete "(a)(2)(C) of this section and, if applicable, (a)(2)(D)"

2 Insert "(a)(1) and (a)(2)(C)"

3

4 Page 6, line 29:

5 Delete "AS 15.13.090(a)(2)(D)"

6 Insert "AS 15.13.090(a)(2)(C)"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

1 Page 5, line 18, through page 6, line 7:

2 Delete all material and insert:

3 "Sec. 15.13.090. Identification of communication. (a) All communications
4 shall be clearly identified by the words "paid for by" followed by the name and
5 address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR
6 INDIVIDUAL] paying for the communication. In addition, **a person shall clearly**

7 **(1) provide the person's address, or the address of the person's**
8 **principal place of business;**

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

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

11 **(B) a statement from the principal officer approving the**
12 **communication; and**

13 **(C) the name and city and state of residence or principal**
14 **place of business, as applicable, of each of the person's three largest**
15 **contributors under AS 15.13.040(e)(5), if any, during the 12-month period**
16 **before the date of the communication; and**

17 **(3) for a candidate, include**

18 **(A) the name of the candidate; and**

19 **(B) a statement from the candidate approving the**
20 **communication** [CANDIDATES AND GROUPS MAY IDENTIFY THE
21 NAME OF THEIR CAMPAIGN CHAIRPERSON]."
22

23 Page 6, lines 19 - 20:

1 Delete "(a)(2)(C) of this section and, if applicable, (a)(2)(D)"

2 Insert "(a)(1) and (a)(2)(C)"

3

4 Page 6, line 29:

5 Delete "AS 15.13.090(a)(2)(D)"

6 Insert "AS 15.13.090(a)(2)(C)"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

1 Page 7, following line 30:

2 Insert a new bill section to read:

3 **** Sec. 16.** AS 15.56.014(a) is amended to read:

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

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

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

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

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

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

22 (C) that would provoke a reasonable person under the
23 circumstances to a breach of the peace or that a reasonable person would

- 1 construe as damaging to the candidate's reputation for honesty or integrity, or
- 2 to the candidate's qualifications to serve if elected to office."
- 3
- 4 Renumber the following bill sections accordingly.

26-LS1448R
Bullard
3/15/10

CS FOR SENATE BILL NO. 284(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY 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; and providing for an effective date."**

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

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

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

12 *** Sec. 2.** AS 15.13.030 is amended to read:

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

14 (1) develop and provide all forms for the reports and statements

1 required to be made under this chapter, AS 24.45, and AS 39.50;

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

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

9 (4) compile and maintain a current list of all filed reports and
10 statements;

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

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

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

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

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

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

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

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29 and contributions received, upon a form prescribed by the commission, unless
30 exempt from reporting.

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

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

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

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

12 (4) the name and address of each officer and director, when
13 applicable;

14 (5) the aggregate amount of all contributions made to the person,
15 if any, for the purpose of influencing the outcome of an election; for all
16 contributions to the person that exceed \$100 in the aggregate in a year, the date
17 of the contribution and amount contributed by each contributor; and for a
18 contributor

19 (A) who is an individual, the name, address, principal
20 occupation, and employer of the contributor; or

21 (B) that is not an individual, the name and address of the
22 contributor and the name and address of each officer and director of the
23 contributor [EXPENDITURES. THE REPORT SHALL BE FILED WITH

24 THE COMMISSION NO LATER THAN 10 DAYS AFTER THE
25 EXPENDITURE IS MADE].

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27 (h) The provisions of (d) of this section do not apply to one or more
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30 INDIVIDUAL] if the expenditures

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

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

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

6 * Sec. 7. AS 15.13 is amended by adding a new section to read:

7 **Sec. 15.13.052. Independent expenditures; political activities accounts.** (a)
8 Before making an independent expenditure in support of or in opposition to a
9 candidate or before making an independent expenditure in support of or in opposition
10 to a ballot proposition or question, each person other than an individual, candidate, or
11 nongroup entity with an annual operating budget of \$250 or less, shall establish a
12 political activities account. The political activities account may be a separate account
13 in the person's general treasury. The political activities account must be administered
14 using generally accepted accounting principles. All funds used by the person to make
15 independent expenditures must be drawn from the person's political activities account.

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

18 (c) Each person who has established a political activities account under this
19 section shall preserve all records necessary to substantiate the person's compliance
20 with the requirements of this section for each of the six preceding years.

21 * Sec. 8. AS 15.13.067 is amended to read:

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

- 25 (1) the candidate;
26 (2) an individual;
27 (3) a group that has registered under AS 15.13.050; and
28 (4) a nongroup entity that has registered under AS 15.13.050.

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

30 (b) A person, other than an individual exempt from reporting under
31 AS 15.13.040(h), [CANDIDATE, GROUP, OR NONGROUP ENTITY] may not

1 make an expenditure unless the source of the expenditure has been disclosed as
2 required by this chapter.

3 * **Sec. 10.** AS 15.13.084 is amended to read:

4 **Sec. 15.13.084. Prohibited expenditures.** A person may not make an
5 expenditure

6 (1) anonymously, unless the expenditure is

7 (A) paid for by an individual acting independently of any
8 **person** [GROUP OR NONGROUP ENTITY AND INDEPENDENTLY OF
9 ANY OTHER INDIVIDUAL];

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

12 (C) made for

13 (i) a billboard or sign; or

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

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

17 * **Sec. 11.** AS 15.13.090 is amended to read:

18 **Sec. 15.13.090. Identification of communication.** (a) All communications
19 shall be clearly identified by the words "paid for by" followed by the name and
20 address of the **person** [CANDIDATE, GROUP, NONGROUP ENTITY, OR
21 INDIVIDUAL] paying for the communication. In addition,

22 (1) candidates and groups may identify the name of their campaign
23 chairperson; **and**

24 (2) **a person other than a candidate, an individual, or a political**
25 **party shall clearly**

26 (A) **identify the person's principal officer and the officer's**
27 **title;**

28 (B) **include a statement from the principal officer**
29 **approving the communication;**

30 (C) **provide the address of the person's principal place of**
31 **business;**

1 (D) identify the name and city and state of residence or
2 principal place of business, as applicable, of each of the person's five
3 largest contributors under AS 15.13.040(e)(5), if any, during the 12-month
4 period before the date of the communication; and

5 (E) state that the communication, if made to influence the
6 outcome of an election for elective office, is not authorized or approved by
7 any candidate.

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

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

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

14 (3) is made for

15 (A) a billboard or sign; or

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

18 * Sec. 12. AS 15.13.090 is amended by adding a new subsection to read:

19 (c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable,
20 (a)(2)(D) of this section, the following statement or statements must be read, in a
21 manner that is easily heard, or placed in the communication so as to be easily
22 discernable, or, in a communication that is transmitted by a method that includes both
23 audio and video components, be read in a manner that is easily heard and placed in the
24 communication so as to be easily discernable:

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

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

30 * Sec. 13. 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. 14.** 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. 15.** 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. 16.** AS 15.13.140(a) is repealed.

1

* Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT #

BY COGHILL

1 Page 2, line 28;

2 After the words "making an", insert:

3 **independent**

4

5 Page 6, line 13:

6 After "(g) An", insert:

7 **independent**

AMENDMENT #

BY COGHILL

1 Page 4, line 6 – 13:

2 Delete all language and insert:

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

AMENDMENT #

BY COGHILL

1 Page 5, lines 17 – 20:

2 Delete all language.

3

4 Page 5, line 16, after “In addition,”

5 Insert:

6 **a person shall clearly**

7

8 Page 5, line 26:

9 After “business;”

10 Insert: **and**

11

12 Line 27, after “(D)” delete:

13 [indentify the person’s five largest contributors under AS 15.13.040(e)(5), if any, during

14 the 12-month period before the date of the communication, with the words “top five

15 contributors”; and

16 (E)]

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 284

1 Page 5, line 27, following "the":

2 Insert "name and city and state of residence or principal place of business, as
3 applicable, of each of the"

4
5 Page 5, line 29, following "communication":

6 Delete ", with the words "top five contributors""

7
8 Page 6, following line 11:

9 Insert a new bill section to read:

10 **** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

11 (c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable,
12 (a)(2)(D) of this section, the following statement or statements must be read, in a
13 manner that is easily heard, or placed in the communication so as to be easily
14 discernable, or, in a communication that is transmitted by a method that includes both
15 audio and video components, be read in a manner that is easily heard and placed in the
16 communication so as to be easily discernable:

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

19 The top contributors of (person's name) are (the name and city
20 and state of residence or principal place of business, as applicable, of
21 the largest contributors to the person under AS 15.13.090(a)(2)(D))."

22

23 Renumber the following bill sections accordingly.

Audible Disclaimer Why it is important for Independent Expenditures:

1. Unlike regular ads, the money that can go into "independent expenditures" is Unlimited. Given the danger of unlimited spending by unions, corporations, environmental and business groups, stronger disclosure of who really is dumping money into an ad is important.
2. With the long "disclaimer (5 top contributors) – a 4 second flash on the screen of a very long "paid for" line won't be noticed by voters. The verbal disclaimer is really needed here.
3. Alpheus Bullard wrote the language (under current law, TV advertisers are given the OPTION of a written or verbal disclaimer) – he can testify if you have language questions.

AMENDMENT #6

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR COGHILL

1 Page 4, lines 5 - 14:

2 Delete all material and insert:

3 **** Sec. 7. AS 15.13.067 is amended to read:**

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

7 (1) the candidate;

8 (2) an individual;

9 (3) a group that has registered under AS 15.13.050; and

10 (4) a nongroup entity that has registered under AS 15.13.050."

11

12 Page 5, lines 3 - 11:

13 Delete all material.

14

15 Renumber the following bill sections accordingly.

AMENDMENT #5

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR COGHILL

1 Page 5, line 13, through page 6, line 1:

2 Delete all material and insert:

3 "Sec. 15.13.090. Identification of communication. (a) All communications
4 shall be clearly identified by the words "paid for by" followed by the name and
5 address of the person [CANDIDATE, GROUP, NONGROUP ENTITY, OR
6 INDIVIDUAL] paying for the communication. In addition, a person shall clearly

7 (1) provide the person's address, or the address of the person's
8 principal place of business;

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

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

11 (B) a statement from the principal officer approving the
12 communication; and

13 (3) for a candidate, include

14 (A) the name of the candidate; and

15 (B) a statement from the candidate approving the
16 communication [CANDIDATES AND GROUPS MAY IDENTIFY THE

17 NAME OF THEIR CAMPAIGN CHAIRPERSON]."

AMENDMENT #4

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 284

1 Page 5, line 27, following "the":

2 Insert "name and city and state of residence or principal place of business, as
3 applicable, of each of the"
4

5 Page 5, line 29, following "communication":

6 Delete ", with the words "top five contributors""
7

8 Page 6, following line 11:

9 Insert a new bill section to read:

10 **** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

11 (c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable,
12 (a)(2)(D) of this section, the following statement or statements must be read, in a
13 manner that is easily heard, or placed in the communication so as to be easily
14 discernable, or, in a communication that is transmitted by a method that includes both
15 audio and video components, be read in a manner that is easily heard and placed in the
16 communication so as to be easily discernable:

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

19 The top contributors of (person's name) are (the name and city
20 and state of residence or principal place of business, as applicable, of
21 the largest contributors to the person under AS 15.13.090(a)(2)(D))."
22

23 Renumber the following bill sections accordingly.

AMENDMENT #3

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR FRENCH

1 Page 4, following line 4:

2 Insert a new bill section to read:

3 **** Sec. 7. AS 15.13 is amended by adding a new section to read:**

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

5 Before making an independent expenditure in support of or in opposition to a
6 candidate or before making an independent expenditure in support of or in opposition
7 to a ballot proposition or question, each person other than an individual, candidate, or
8 nongroup entity with an annual operating budget of \$250 or less, shall establish a
9 political activities account. The political activities account may be a separate account
10 in the person's general treasury. The political activities account must be administered
11 using generally accepted accounting principles. All funds used by the person to make
12 independent expenditures must be drawn from the person's political activities account.

13 (b) Records necessary to substantiate the requirements of (a) of this section
14 must be made available for inspection by the commission.

15 (c) Each person who has established a political activities account under this
16 section shall preserve all records necessary to substantiate the person's compliance
17 with the requirements of this section for each of the six preceding years."
18

19 Renumber the following bill sections accordingly.

LEGAL SERVICES

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STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 12, 2010

SUBJECT: Political activities account amendment to SB 284
(Work Order No. 26-LS1448\A.4 to SB 284)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy French

FROM: Alpheus Bullard *ALAB*
Legislative Counsel

I have one comment regarding amendment A.4.

If this amendment is to be incorporated into the bill, you may wish to consider further amending the bill to require a person to report to the Alaska Public Offices Commission (commission) when funds are deposited into, or expended from, the person's political activities account. Such a change would shift a number of the requirements of the current bill's expenditure report section (sec. 4 of SB 284, 26-LS1448\A) to the political activities account section added by this amendment. Reporting requirements for the political activities account would also have to be included.

Such a change is not legally or constitutionally required. At present, the bill requires a person making an expenditure under AS 15.13.040(d) to report the persons' contributors, if any, when making an expenditure report under AS 15.13.040(e). It may be more efficient for both persons making independent expenditures and the commission to have funds received into, and withdrawn from, a political activities account reported.

You may wish to confer with the appropriate personnel at the commission about the above suggestion.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-168.ljw

Enclosure

AMENDMENT

#2

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR COGHILL

1 ~~Page 1, line 28, following "an":~~

2 ~~Insert "independent"~~

3

4 Page 6, line 13, following "An":

5 Insert "independent"

6

7 Page 6, line 14, following "an":

8 Insert "independent"

9

10 Page 6, line 15, following the first occurrence of "an":

11 Insert "independent"

AMENDMENT # 1

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR FRENCH

- 1 Page 2, line 28:
- 2 Following "an":
- 3 Insert "independent"
- 4 Following "expenditures":
- 5 Insert "made and contributions received"

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Juneau, Alaska 99801-1182
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MEMORANDUM

March 12, 2010

SUBJECT: Amendment 26-LS1448\A.3 (SB 284)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the amendment described above. I have one comment.

In addition to the change you requested, I added the word "independent" to "expenditure" to clarify that the reporting requirements of AS 15.13.040(d) and (e) apply only to independent expenditures. In current law these provisions read "expenditure." However, it is the practice of the Alaska Public Offices Commission to require only the reporting of independent expenditures under these subsections. Candidates, groups, and nongroup entities report their expenditures under AS 15.13.040(a), (b), and (j) respectively.¹

If you have any questions, please do not hesitate to contact me.

TLAB:lmb
10-003.lmb

Enclosure

¹ See 2 AAC 50.336(a), which provides:

(a) A candidate, group, or nongroup entity who regularly files reports under 2 AAC 50.321 and satisfies the applicable requirements of AS 15.13.040(a), (b), (c), and (j) need **not also file a statement of contribution or of independent expenditure under AS 15.13.040(d) or (e)** (emphasis added).

SEAN PARNELL
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

LABOR & STATE AFFAIRS
1031 WEST 4th AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-6612
FAX: (907) 258-4978

March 9, 2010

VIA U.S. MAIL

Cindy Smith
Office of Senator Hollis French
State Capitol Room 417
Juneau AK, 99801

Re: *Response to your Inquiry Regarding Senate Bill 284*

In response to *Citizens United v. FEC*, Senate Bill 284 (SB 284), as proposed, permits companies and labor unions to make expenditures in candidate elections. Companies and labor unions would still be restricted from making contributions directly to candidates. Arguably, the definitions of expenditure and contribution overlap. See AS 15.13.400(4); 15.13.400(6)(A)(iii). Consider clarification of these definitions.

SB 284 (Section 11) would require the company or labor union to disclose the top five contributors to the expenditure. Section 11 does not clarify the proper disclosure if several contributors contribute the same amount of money. For instance, the company or labor union would have no statutory guidance if its top 10 contributors all contribute equally to the expenditure.

SB 284 (Section 4) would require the company or labor union to disclose each officer or director of the company or labor union. SB 284 allows entities other than corporations and labor unions to make expenditures in candidate elections. It may be appropriate to expand this disclosure requirement to more than officers and directors.

These are my initial impressions and do not hesitate to contact me with further questions.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 

John M. Ptacin
Assistant Attorney General
Alaska Bar No. 0412106

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MEMORANDUM

March 12, 2010

SUBJECT: Amendment 26-LS1448\A.5 to SB 284
(Work Order No. 26-LS1448\A.5)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard *TLAB*
Legislative Counsel

You requested an amendment that would require "in addition to ads that specifically support or oppose candidates, all ads during an election season that refer to a candidate for office [to] disclose and use disclaimers." Section 11 of SB 284 requires certain information to be identified in all communications. Communication is defined under AS 15.13.400(3):

"communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c)[.]

Any communication that directly or indirectly identifies a candidate is required to contain the disclaimer and information required by AS 15.13.090. The expenditure or independent expenditure made to fund the communication must be disclosed to the Alaska Public Office Commission under AS 15.13.040.

I have placed this amendment on hold, pending further instruction from your office. If I have misapprehended the nature of your request or if you would like to cancel the amendment, please do not hesitate to contact me.

TLAB:lmb
10-004.lmb

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

March 15, 2010

TO: Alpheus Bullard

FROM: Cindy Smith for Senator Hollis French

RE: new CS for SB284

A handwritten signature in cursive, likely belonging to Cindy Smith, written over the "FROM" line.

Please draft a new CS for SB284 (26-LS1448\R): with the following amendments

On page 6, delete lines 5, 6 and 7.

Amendment R.2, attached

We'll need it for the committee meeting on Wednesday - if possible I'd like to get it in time to make copies and distribute them, so if I can have it Tuesday afternoon that'd be great!

AMENDMENT #2

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: CSSB 284(JUD), Draft Version "R"

1 Page 7, following line 30:

2 Insert a new bill section to read:

3 **** Sec. 16.** AS 15.56.014(a) is amended to read:

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

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

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

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

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

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

22 (C) that would provoke a reasonable person under the
23 circumstances to a breach of the peace or that a reasonable person would

1 construe as damaging to the candidate's reputation for honesty or integrity, or
2 to the candidate's qualifications to serve if elected to office."

3

4 Renumber the following bill sections accordingly.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

March 16, 2010

TO: Alpheus Bullard

FROM: Cindy Smith for Senator Hollis French

RE: Amendment to CSSB284\E

Please draft an amendment to CSSB284\E to do the following:

In section 12 provide language that distinguishes that audio disclaimers are only required to provide the person's name (and not city and state of principal place of business) and the names of the largest contributors (again, not the city and state of principal place of business) of the largest contributors to the person under AS.15.13.090(a)(2)(D).

We need to differentiate this from print requirements, which stay the same.

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MEMORANDUM

March 1, 2010

SUBJECT: Senate Bill 284 and Attorney General's analysis of Citizens United and its effect on Alaska law (Work Order No. 26-LS1448VA)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard *LAB*
Legislative Counsel

You asked whether Senate Bill 284 (SB 284) addresses the effects on AS 15.13 (state elections) of the United States Supreme Court's decision in Citizens United v. Federal Elections Commission, No. 08-205, 558 U.S. ____ (January 21, 2010), identified in the Attorney General's opinion of February 19, 2010.¹

Citizens United implicates the state's existing statutory prohibition against labor unions and certain corporations making independent expenditures for the purpose of influencing state elections. The Attorney General's opinion identifies AS 15.13.067 and AS 15.13.135(a)² as statutes that are likely invalidated by the ruling and recommends that certain state campaign finance laws relating to the identification of communications³ and the disclosure of expenditures⁴ be amended "to provide more clarity for Alaskans."

While the Attorney General's opinion does not prescribe how AS 15.13 should be amended to conform with Citizens United, SB 284 amends AS 15.13.067 and AS 15.13.135(a) to no longer prohibit labor unions and corporations from making independent expenditures in state election campaigns and additionally amends, and adds to, the body of state law governing the reporting of expenditures and the identification of communications in state elections.

If you have further questions, please do not hesitate to contact me.

TLAB:ljw
10-132.ljw

¹ Available on February 26th at <http://www.law.state.ak.us/pdf/civil/021910-citizen.pdf>.

² See the Attorney General's opinion of February 19, 2010, at pages 5 - 6.

³ Id. at 6 - 7.

⁴ Id. at 6 - 8.

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MEMORANDUM

March 17, 2010

SUBJECT: Amendments E.4 and E.5 to CSSB 284(JUD)
(Work Order No. 26-LS1448\E)

TO: Senator Bill Wielechowski
Attn: Shelly Morgan

FROM: Alpheus Bullard *TAB*
Legislative Counsel

This memorandum accompanies the amendments described above.

Amendment E.4

Amendment E.4 prohibits a foreign national from making directly, or indirectly, a contribution or expenditure in connection with a state election.

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.¹ Because 2 U.S.C. 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and

¹ See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.

There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .

Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .

Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office."); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign contributions and expenditures in campaigns for state office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility. Proposed AS 15.13.068(c) is an attempt to avoid conflicts with federal law as much as possible, but it may not succeed.

Amendment E.5

Amendment E.5 prohibits a person that is owned or controlled, in any part, by a foreign national from making an expenditure in connection with a state election. This amendment raises significant First Amendment issues. Given that that federal law already prohibits foreign nationals from directly or indirectly making contributions or expenditures in connection with a state election, I don't know what compelling state interest would serve as justification for such a prohibition. Because any large publicly traded domestic corporation is likely to have some foreign shareholders, a court is likely to interpret such a provision, if enacted, as an indirect prohibition against independent expenditures made by these persons, a violation of the First Amendment under Citizens United v. Federal Election Commission, 558 U.S. ____ (2010).

Because the amendment applies only to persons that are owned or controlled in some part by foreign nationals, whether the ownership interest be a majority interest or a de minimus minority interest, the amendment also raises equal protection issues. Alaska evaluates equal protection claims using a sliding scale.² There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."³ In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Under the amendment, a domestic corporation with .005 percent foreign ownership, in which a foreign national or nationals are unable to exert any meaningful control, would be treated differently from a publicly traded corporation that, by chance, has no shares held by foreign nationals. A court is unlikely to interpret this disparate treatment of domestic corporations as reasonable, and I don't know what state interest could be articulated as justification for such a prohibition.

TLAB:plm
10-150.plm

Enclosures

² Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

³ Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

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MEMORANDUM

March 17, 2010

SUBJECT: Committee questions of March 15, 2010 (CSSB 284(JUD))
(Work order No. 26-LS1448\E)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard *AB*
Legislative Counsel

As part of a legislative response to the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___ (January 21, 2010), you requested a legal opinion as to whether the state could prohibit independent expenditures made in connection with a state election, by (1) foreign nationals, (2) American subsidiaries of foreign nationals, (3) domestic corporations owned in part by foreign nationals, and (4) domestic corporations or entities not domiciled in Alaska.

Any statute prohibiting a person from making an independent expenditure in connection with a state election is likely to be challenged on First Amendment grounds. A state prohibition against independent expenditures made by foreign nationals, who are already prohibited from making contributions or expenditures in connection with federal, state, or local elections under federal law, raises federal preemption issues. Prohibiting independent expenditures by domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, and domestic corporations or entities not domiciled in Alaska raise additional constitutional issues.

First Amendment

The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association.¹ Independent expenditures made in connection with state elections are protected speech under the First Amendment. See Randall v. Sorrell, 548 U.S. 230 (2006), and Buckley v. Valeo, 424 U.S. 1 (1976).

¹ Note that the freedom of speech provision in article I, section 5 of the Constitution of the State of Alaska is more protective of speech than the United States Constitution's First Amendment. Mickens v. City of Kodiak, 640 P.2d 818, 820 (Alaska 1982); Messerli v. State, 626 P.2d 81, 83 (Alaska 1980).

An attempt to prohibit independent expenditures by any class or category of persons is likely to encounter constitutional problems associated with First Amendment protections of the rights of association and expression.

The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Buckley, 424 U.S. at 48 - 49 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 266, 269 (1964) (citations omitted)). In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court observed that existing campaign finance jurisprudence was based on the threat of corruption. Id. at 606 - 607. The Supreme Court has recently concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___, Slip op. at 42 (January 21, 2010).

Given that independent expenditures have not been found to present a risk of corruption or the appearance of corruption, a state effort to prohibit independent expenditures from any source may face significant First Amendment hurdles.

The state's interest in prohibiting independent expenditures made by nonresidents or persons domiciled outside the state

I am not aware of any applicable judicial decision holding that protecting state residents from nonresident domination or enhancing voter participation is a compelling state interest. See Alaska Civil Liberties Union, 978 P.2d at 615. Instructive, however, is VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), in which the Ninth Circuit invalidated a geographically based restriction on political contributions enacted by initiative in Oregon. The court found:

Measure 6 bans all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption. Appellants are unable to point to any evidence which demonstrates that all out-of-district contributions lead to the sort of corruption discussed in Buckley. . . . Measure 6 is not closely drawn to advance the goal of preventing corruption and under this analysis fails to pass muster under the First Amendment.

Id. at 1221. The proponents of the initiated law in VanNatta also offered an alternate justification for the measure, apart from the corruption rationale. They argued that the measure protected the state's interest in the integrity of republican government by, in the

court's words, "assuring that representatives are truly selected by their own constituents." Id. However, the court rejected this justification, observing that "[t]he right to a republican form of government has never been recognized as a sufficiently important state interest." Id., citing Whitmore v. Federal Election Comm'n, 68 F.3d 1212 (9th Cir.1995) (rejecting the same argument as a justification for a ban on out-of-state contributions in Alaska). A state law prohibiting independent expenditures made by persons who are citizens of, or who are domiciled in, other states would be similarly evaluated by a court, and absent some evidence showing the corrupting influence of non-resident expenditures, would be struck down by a court.

Privileges and immunities

Prohibiting independent expenditures from non-residents would also be subject to challenge under the privileges and immunities clause. The federal privileges and immunities clause restricts the state's ability to interfere with the fundamental rights of non-residents. See Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). The Alaska Supreme Court has summarized the effect of the privileges and immunities clause as follows:

Article IV, section 2 prohibits discrimination against nonresidents "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." No "substantial reason" will be found absent some showing that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy. In addition, the discrimination worked upon nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Only if the challenged discriminatory action surmounts both of these hurdles will it survive privileges and immunities clause scrutiny.

Noll v. Alaska Bar Association, 649 P.2d 241, 244 (Alaska 1982) (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948), and Hicklin v. Orbeck, 437 L.Ed.2d 397, 404 (1978); citations omitted). So, in addition to having to provide a "compelling justification" for the measure to satisfy the First Amendment, you would also need to show a "substantial reason" why a prohibition against independent expenditures should apply only to non-residents in order to withstand a privileges and immunities clause challenge.

Equal protection

If the state were to prohibit domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from making independent expenditures in connection with a state election, the prohibition would likely also face an equal protection challenge. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to

equal treatment."² In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Alaska evaluates equal protection claims using a sliding scale.³ There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose.

Because federal law prohibits foreign nations from making contributions or expenditures, directly or indirectly, in connection with a state election, it is not clear to me what state purpose any of these possible prohibitions would serve. Consequently, I do not know how a court would evaluate the state's interest in prohibiting domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from exercising their First Amendment right recognized in Citizens United to make independent expenditures.

Preemption

In Citizens United, the Supreme Court neither considered nor overruled the existing federal law that prohibits a "foreign national" from making a direct or indirect expenditure in connection with a federal, state, or local election. The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.⁴ Because 2 U.S.C. § 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

² Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

³ Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

⁴ See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Additionally, "[w]here coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.

There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .

Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .

Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. § 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office"); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [I]mitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may prohibit independent expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign expenditures in campaigns for state

Senator Hollis French
March 17, 2010
Page 6

office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility.

If you have further questions, please do not hesitate to contact me.

TLAB:ljw:plm
10-191.ljw

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MEMORANDUM

March 15, 2010

SUBJECT: Drafting issues (CSSB 284(JUD)) (Work Order No. 26-LS1448\R)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the Committee Substitute you requested. I have three comments.

1. The requirement added by this draft's sec. 12 15.13.090(a)(2)(E), that "a person other than a candidate, an individual, or a political party shall clearly . . . state that [a] communication, if made to influence the outcome of an election for elective office, is not authorized or approved by any candidate[.]" is unnecessary. Existing AS 15.13.135(b)(2) already provides:

(b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office . . . shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

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

You may wish to consider an amendment to remove the redundant requirement of the bill's sec. 15.13.090(a)(2)(E).

2. The crime of campaign misconduct in the second degree is defined by AS 15.56.014. AS 15.56.014(a)(2) of that section provides that

[a] person commits the crime of campaign misconduct in the second degree if the person . . . except as provided by AS 15.13.090(b), knowingly prints or publishes an advertisement, billboard, placard, poster,

Senator Hollis French

March 15, 2010

Page 2

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 *candidate, group, or individual* paying for the advertising or communication and, if a candidate or group, with the name of the campaign chair . . . (emphasis added).

The phrase "candidate, group, or individual" should be amended to "person" to correspond to the changes made by the bill to AS 15.13.090.

3. Under sec. 12 of the bill (AS 15.13.090), the "five largest contributors" to the person paying for a communication must be identified in communications made by the person. The phrase "largest contributors" could be interpreted to refer to the size of the contributor. "Largest contributor" might be best replaced with "contributors of the largest amounts." Also, Mr. Ptacin, of the Department of Law, has expressed concern that the bill does not address the possibility of a person paying for a communication having more than five contributors that donate exactly equal amounts. I do not know how likely it is that a person would have contributors of equal amounts. This may be an issue that the Alaska Public Offices Commission (commission) can address in regulation, or, if it is your intent, some mechanism could be provided in the bill to deal with this scenario. Whether or not further clarification is required may be a matter that you wish to discuss with a member of the commission.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-177.ljw

Enclosure

Post-it® Fax Note	7671	Date	# of pages ▶ 1
To	Alpheus Bullard	From	Cindy
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

Cindy Smith

From: Ptacin, John M (LAW) [john.ptac
Sent: Monday, March 15, 2010 10:56
To: Cindy Smith
Subject: RE: any suggestions?

AS 15.13.040(e)(4) could benefit from expansive definitions. See Paragraph 3 of my letter last week. These definitions may help.

The term "officer" means a president, vice president, secretary, treasurer or principal financial or comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Friday, March 12, 2010 4:26 PM
To: Ptacin, John M (LAW)
Subject: any suggestions?

Did you have any suggestions for how to handle multiple top contributors if there are more than 5?

I've sent your letter over to Alpheus to think about as well, but any suggested language is always helpful!

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.aksenate.org

A -
Please draft as an
amendment to the working
draft CS SB204 -
C .

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MEMORANDUM

March 12, 2010

SUBJECT: Expenditures, independent expenditures, and the effect of amendment 26-LS1448\A.8 to SB 284

TO: Senator John Coghill
Attn: Rynniva Moss

FROM: Alpheus Bullard *LAB*
Legislative Counsel

This memorandum accompanies amendment A.8 to SB 284.

This amendment would make explicit that the only expenditures that the bill permits, beyond those that are currently allowed, are the independent expenditures that the Court, in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ____ (January 21, 2010) (a case about independent election campaign expenditures made by corporations),¹ held could not be prohibited under the First Amendment.

The United States Supreme Court's Citizens United decision spoke in terms of "independent expenditures" in the course of an election campaign. Since the legal distinction between an "expenditure" on behalf of a candidate made by a corporation or labor union and a "contribution" from that corporation or labor union to the candidate is not entirely clear,² it seems best to follow the court's lead and to make explicit in the bill

¹ 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 U. S. Supreme Court opinion.

² See definitions for "contribution" and "expenditure" at AS 15.13.400:

(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

that the only expenditures that may be made under AS 15.13 by a person that is not a candidate, individual, group, or nongroup entity, are independent expenditures.

political party, or compensation for the personal services of another person, that are rendered to the candidate or political party; . . .

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(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;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

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

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

Senator John Coghill

March 12, 2010

Page 3

As a drafting matter, amendment A.8 proposes to modify existing AS 15.13.067 to clarify that the only persons permitted to make an expenditure that is not an independent expenditure in a state election are those persons who are currently permitted to do so under state law. Because AS 15.13.067(c)(3) is to be retained, there is no need to repeal the reference to that section that appears in bill section 9. Since the remainder of bill section 9 consists of technical changes, this amendment eliminates bill section 9.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-169.ljw

Enclosure

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

March 11, 2010

TO: Alpheus Bullard

FROM: Cindy Smith, Senate Judiciary Committee

RE: Amendments to SB284

After speaking with Senator French, he would like the following amendments drafted for the committee's review tomorrow:

1. In section 3, clarify that it is full report of contributions and expenditures (per Mike Frank's suggestion)
2. Add language that makes it clear that a person making independent expenditures keep a separate account of funds used for this purpose.
3. The appropriate section or sections should be amended to clarify that in addition to ads that specifically support or oppose candidates, all ads during an election season that refer to a candidate for office must also disclose and use disclaimers.
4. Amend disclaimer language to include audio disclaimers, per attached language you drafted for the house bill.

AMENDMENT

OFFERED IN THE SENATE

TO: SB 284

1 Page 5, line 27, following "the":

2 Insert "name and city and state of residence or principal place of business, as
3 applicable, of each of the"

4
5 Page 5, line 29, following "communication":

6 Delete ", with the words "top five contributors""

7
8 Page 6, following line 11:

9 Insert a new bill section to read:

10 **** Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

11 (c) To satisfy the requirements of (a)(2)(C) of this section and, if applicable,
12 (a)(2)(D) of this section, the following statement or statements must be read, in a
13 manner that is easily heard, or placed in the communication so as to be easily
14 discernable, or, in a communication that is transmitted by a method that includes both
15 audio and video components, be read in a manner that is easily heard and placed in the
16 communication so as to be easily discernable:

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

19 The top contributors of (person's name) are (the name and city
20 and state of residence or principal place of business, as applicable, of
21 the largest contributors to the person under AS 15.13.090(a)(2)(D))."

22
23 Renumber the following bill sections accordingly.



ALASKA STATE LEGISLATURE

SENATOR JOHN COGHILL

State Capitol, Room 504, Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

MEMORANDUM

Date: March 12, 2010

To: Alpheus Bullard, Legal Counsel

From: Rynnieva Moss, Legislative Aide *Rumoss*

Re: Amendments for SB 284

I have attached three amendments to be prepared for Senate Judiciary this afternoon. Can you have them prepare for submittal? Thank you.

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MEMORANDUM

March 10, 2010

SUBJECT: Constitutional Issues in CSHB 409(STA)
(Work Order No. 26-LS1495\S)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Mike Sica

FROM: Alpheus Bullard *LAB*
Legislative Counsel

This memorandum accompanies the draft committee substitute you requested. I have some concerns about the constitutionality of some of its provisions.

1. Bill Section 8 (expenditures and contributions by foreign nationals).

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.¹ Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is not clear. Because 2 U.S.C. 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge. To the extent a court might find that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground.

2. Bill Section 10 (anonymous expenditures).

Conceptual amendment number 9 deleted a portion of AS 15.13.084 that permits an individual, acting independently of any other person, to make an anonymous expenditure to influence the outcome of a ballot proposition, if the expenditure is made for a (1) billboard, (2) sign, or (3) printed material, other than an advertisement in a newspaper or other periodical. In McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995), the United States Supreme Court recognized an individual's First Amendment right to anonymous speech. A statute that prohibits an individual from making any anonymous expenditure, no matter how small, in connection with a state election is unlikely to survive scrutiny under the First Amendment or art. I, sec. 5 of the state constitution.²

¹ See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

² Note that the freedom of speech provision in article I, section 5 of the Constitution of the State of Alaska is more protective of speech than the United States' Constitution's

Representative Bob Lynn

March 10, 2010

Page 2

3. Bill Section 12 (precertification).

Subsection 15.13.090(c) requires the principal officer of a person (other than a candidate, individual, or political party) making a communication under AS 15.13.090 to certify to the Alaska Public Offices Commission that the officer has reviewed the communication and, based on the officer's knowledge, the communication is not defamatory and does not contain defamatory statements. This requirement burdens speech and may violate the First Amendment. Candidates, individuals, and political parties would not be required to provide these certifications, which creates a possible equal protection issue.

4. Bill Section 12 (identification of foreign ownership).

Subsection 15.13.090(e) requires a corporation or other person in which a foreign government holds a 10 percent ownership interest or more to identify the foreign government's ownership interest (in the person) in any communication under AS 15.13.090 paid for by that person. The regulation of foreign governments' involvement in state elections may be preempted by federal law (see 1., above). Requiring identification of a foreign government's ownership interest of 10 percent or more in a person paying for a communication under AS 15.13.090 also raises equal protection and First Amendment associational rights issues.

5. Bill Section 17 (severability).

This version of CSHB 409(STA) includes a severability provision. There is a general severability provision in the Alaska statutes (AS 01.10.030). Usually a severability clause is not included in a bill unless it is necessary to specify more details than are provided in AS 01.10.030.

Please note the changes to the title due to the inclusion of the adopted amendments.

The conceptual amendment to amendment #5 (26-LS1495\E.3) is located in a new subsection (f) to AS 15.13.090, found in sec. 12 of this draft.

Since the bill has passed out of your committee, please share the constitutional concerns identified in this memorandum with the next committee of referral. If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-148.ljw

Enclosure

First Amendment. Mickens v. City of Kodiak, 640 P. 2d 818, 820 (Alaska 1982); Messerli v. State, 626 P.2d at 83 (Alaska 1980). Additionally, the federal First Amendment right to anonymous speech may extend beyond individuals to encompass groups of individuals and organizations see American Civil Liberties Union of Nevada v. Heller, 378 F.3d 979, 989 - 991 (9th Cir. 2004).

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 12, 2010

SUBJECT: Amendment 26-LS1448\A.5 to SB 284
(Work Order No. 26-LS1448\A.5)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard *TLAB*
Legislative Counsel

You requested an amendment that would require "in addition to ads that specifically support or oppose candidates, all ads during an election season that refer to a candidate for office [to] disclose and use disclaimers." Section 11 of SB 284 requires certain information to be identified in all communications. Communication is defined under AS 15.13.400(3):

"communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c)[.]

Any communication that directly or indirectly identifies a candidate is required to contain the disclaimer and information required by AS 15.13.090. The expenditure or independent expenditure made to fund the communication must be disclosed to the Alaska Public Office Commission under AS 15.13.040.

I have placed this amendment on hold, pending further instruction from your office. If I have misapprehended the nature of your request or if you would like to cancel the amendment, please do not hesitate to contact me.

TLAB:lmb
10-004.lmb

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FAX (907) 465-2029
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 12, 2010

SUBJECT: Political activities account amendment to SB 284
(Work Order No. 26-LS1448\A.4 to SB 284)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy French

FROM: Alpheus Bullard *ALAB*
Legislative Counsel

I have one comment regarding amendment A.4.

If this amendment is to be incorporated into the bill, you may wish to consider further amending the bill to require a person to report to the Alaska Public Offices Commission (commission) when funds are deposited into, or expended from, the person's political activities account. Such a change would shift a number of the requirements of the current bill's expenditure report section (sec. 4 of SB 284, 26-LS1448\A) to the political activities account section added by this amendment. Reporting requirements for the political activities account would also have to be included.

Such a change is not legally or constitutionally required. At present, the bill requires a person making an expenditure under AS 15.13.040(d) to report the persons' contributors, if any, when making an expenditure report under AS 15.13.040(e). It may be more efficient for both persons making independent expenditures and the commission to have funds received into, and withdrawn from, a political activities account reported.

You may wish to confer with the appropriate personnel at the commission about the above suggestion.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-168.ljw

Enclosure

AMENDMENT

OFFERED IN THE SENATE
TO: SB 284

BY SENATOR FRENCH

1 Page 4, following line 4:

2 Insert a new bill section to read:

3 **"* Sec. 7. AS 15.13 is amended by adding a new section to read:**

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

5 Before making an independent expenditure in support of or in opposition to a
6 candidate or before making an independent expenditure in support of or in opposition
7 to a ballot proposition or question, each person other than an individual, candidate, or
8 nongroup entity with an annual operating budget of \$250 or less, shall establish a
9 political activities account. The political activities account may be a separate account
10 in the person's general treasury. The political activities account must be administered
11 using generally accepted accounting principles. All funds used by the person to make
12 independent expenditures must be drawn from the person's political activities account.

13 (b) Records necessary to substantiate the requirements of (a) of this section
14 must be made available for inspection by the commission.

15 (c) Each person who has established a political activities account under this
16 section shall preserve all records necessary to substantiate the person's compliance
17 with the requirements of this section for each of the six preceding years."
18

19 Renumber the following bill sections accordingly.

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

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),¹ Citizens United sought declaratory and injunctive relief in the United

¹ 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.² Citizens United argued that § 203 of the BCRA³ violated the First Amendment on its face and as applied to the documentary and its related advertisements, and that §§ 201⁴ and 311⁵ 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).⁶ 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

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

³ 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).

⁴ 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).

⁵ 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.

⁶ 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, 2008,⁷ 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)⁸, 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 treasuries⁹ for certain independent expenditures made to influence the outcomes of elections for federal public office, was unconstitutional.¹⁰ It

⁷ 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."

⁸ 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.

⁹ 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.

¹⁰ 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 26.¹¹

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.¹² 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.¹³

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 50.¹⁴

¹¹ 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.

¹² "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.).

¹³ 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.

¹⁴ 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 15.13.¹⁵ 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.¹⁶

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 reports¹⁷ 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

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

¹⁵ 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.

¹⁶ 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.

¹⁷ See AS 15.13.040, AS 15.13.082, AS 15.13.090, and AS 15.13.110.

Representative Jay Ramras
January 25, 2010
Page 6

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

Cindy Smith

From: Ptacin, John M (LAW) [john.ptacin@alaska.gov]
Sent: Monday, March 15, 2010 10:56 AM
To: Cindy Smith
Subject: RE: any suggestions?

AS 15.13.040(e)(4) could benefit from expansive definitions. See Paragraph 3 of my letter last week. These definitions may help.

The term "officer" means a president, vice president, secretary, treasurer or principal financial or comptroller or

principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

The term "director" means any director of a corporation or any person performing similar function with respect to any organization whether incorporated or unincorporated.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Friday, March 12, 2010 4:26 PM
To: Ptacin, John M (LAW)
Subject: any suggestions?

Did you have any suggestions for how to handle multiple top contributors if there are more than 5?

I've sent your letter over to Alpheus to think about as well, but any suggested language is always helpful!

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.aksenate.org

Cindy Smith

From: Ware, Patricia A (DOA) [patricia.ware@alaska.gov]
Sent: Wednesday, April 21, 2010 8:14 AM
To: Cindy Smith
Subject: RE: HB36 and SB284 pass

Cindy,

I took a couple days off but did watch gavel to gavel and see that both passed the noted the amendment. Kind of funny how after camping out over there a few weekends in a row, the process becomes even more fascinating (and maddening at times) but I confess that chips and gavel to gavel were a staple ...

And, I want to say again how very much I appreciate your expertise and shepherding me through some of the nuances of the process- I really enjoyed working with you and the staff. I continue to be amazed at your good humor in the face of some of the stuff that goes on – you are indeed a role model for all of us! Hope you are planning on some amount of a break soon ...

Patty Ware, Administrator, Juneau Office
Alaska Public Offices Commission (APOC)
patricia.ware@alaska.gov
Phone: (907) 465-4865 Fax: (907) 465-4832
<http://doa.alaska.gov/apoc/>

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Monday, April 19, 2010 12:35 AM
To: Ware, Patricia A (DOA); Ptacin, John M (LAW); Hill, Holly R (DOA)
Subject: HB36 and SB284 pass

Thought I'd take a moment to thank each of you for all of your work on these bills – they both passed late this evening and you helped make them better bills.

By the way, the audio tv components in SB284 were restored in a floor amendment in the house....

Cindy

Cindy Smith

From: Ptacin, John M (LAW) [john.ptacin@alaska.gov]
Sent: Monday, April 12, 2010 1:46 PM
To: Cindy Smith
Subject: SB 284

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Cindy:
Headed to Fbx tomorrow. Just give a call on the cell with anything re SB 284.

John
304-2271

Cindy Smith

From: Ptacin, John M (LAW) [john.ptacin@alaska.gov]
Sent: Tuesday, March 16, 2010 10:00 AM
To: Cindy Smith
Subject: RE: any suggestions?

Hi:

That is a valid concern re the top 5.

Defining director and officer:

To follow up on the letter I submitted, APOC could best administer the proposed legislation if "principle officer" and "director" were defined. I believe SB 284 Section 4 wants any person routinely performing the duties of an officer or director to be included on the APOC reporting form.

I believe that the phrase "any person performing similar functions with respect to any organization whether incorporated or unincorporated," or some variation of this language, would apply the reporting requirement to loosely affiliated groups, labor unions, LLC's, essentially to any organization not in the corporate form. It would assist APOC administration because it clarifies that anyone acting as a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, etc., regardless of title, would need to report under Section 4 of the proposed legislation.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Tuesday, March 16, 2010 9:33 AM
To: Ptacin, John M (LAW)
Subject: RE: any suggestions?

Hi John!

I am on the run and meant to get back to you yesterday - We looked at your idea for the 5-top contributors and I am not sure it will work. This is for a disclaimer in advertising and even doing 5 is pushing ad time! If there were more I don't see how it could be done. We're all still thinking about this requirement so I'll try to come up with something...

Do we have unincorporated corporations? Is that possible?

From: Ptacin, John M (LAW) [mailto:john.ptacin@alaska.gov]
Sent: Monday, March 15, 2010 10:56 AM

To: Cindy Smith
Subject: RE: any suggestions?

AS 15.13.040(e)(4) could benefit from expansive definitions. See Paragraph 3 of my letter last week. These definitions may help.

The term "officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or

principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

John-

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Friday, March 12, 2010 4:26 PM
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Subject: any suggestions?

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I've sent your letter over to Alpheus to think about as well, but any suggested language is always helpful!

Cindy Smith
Office of Senator Hollis French
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www.aksenate.org

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.¹ 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*.² The Court's main holding was that

¹ See 558 U.S. ___, at 2, --- S.Ct. ---- (2010).

² 558 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.”³ The particular federal law reviewed by the Court, part of the Bipartisan Campaign Reform Act of 2002,⁴ 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.⁵ 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.⁶

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.⁷

³ *Id.* at 1-2.

⁴ 2 U.S.C. § 441b (2000).

⁵ 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).

⁶ 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).

⁷ 558 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.⁸ 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.⁹ 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.¹⁰ An “independent expenditure” is a type of expenditure but is more limited in that it is made without any coordination with a candidate.¹¹

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.¹²

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

⁹ See AS 15.13.400(4)(A).

¹⁰ 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).

¹¹ 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).

¹² 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.¹³ 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.¹⁴ Candidates and their agents are still prohibited from accepting contributions from corporations and labor unions.¹⁵ A corporation or labor union still may not directly or indirectly consult or cooperate with candidates or their agents when making an expenditure.¹⁶ Individuals are still limited to contributing \$500 per year to a candidate, and \$5,000 per year to a political party,¹⁷ and corporations and labor unions must continue to follow disclosure laws whenever applicable.¹⁸ 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.¹⁹ There must be some identification of corporations or labor

¹³ See AS 15.13.067; AS 15.13.135(a).

¹⁴ See AS 15.13.065(a); AS 15.13.074(a).

¹⁵ AS 15.13.072(a)(1).

¹⁶ 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.

¹⁷ AS 15.13.070(b)(1)-(2).

¹⁸ 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.

¹⁹ 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.²⁰

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,²¹ 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.²² After *Citizens United*, these specific prohibitions will not likely pass constitutional muster.

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.”

²⁰ 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.

²¹ AS 15.13.400(8), (11), (13).

²² 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.²³ 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.²⁴ 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.²⁵ 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

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

²⁴ 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.

²⁵ 558 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.²⁶ 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,²⁷ and Alaska statutes currently require all persons making independent expenditures to report those expenditures to The Alaska Public Offices Commission within 10 days.²⁸ 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,²⁹ nongroup entities,³⁰ and candidates³¹ 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.³² But as there is currently no Alaska

²⁶ 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.

²⁷ 558 U.S. at 51-2.

²⁸ AS 15.13.040(d)-(e).

²⁹ AS 15.13.400(8).

³⁰ AS 15.13.400(13).

³¹ AS 15.13.400(1).

³² 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,³³ under current law, an independent expenditure made within 10 days of a candidate election does not have to be reported until after the election.³⁴ 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.³⁵ *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.³⁶ Alaska law does not have a corresponding prohibition on expenditures made by foreign nationals or foreign corporations in our elections.³⁷

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.

³³ AS 15.13.110(b).

³⁴ See AS 15.13.040(d)-(e).

³⁵ 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.

³⁶ 558 U.S. ___, at 47 citing 2 U.S.C. § 441(e).

³⁷ 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.

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March 9, 2010

VIA U.S. MAIL

Cindy Smith
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State Capitol Room 417
Juneau AK, 99801

Re: *Response to your Inquiry Regarding Senate Bill 284*

In response to *Citizens United v. FEC*, Senate Bill 284 (SB 284), as proposed, permits companies and labor unions to make expenditures in candidate elections. Companies and labor unions would still be restricted from making contributions directly to candidates. Arguably, the definitions of expenditure and contribution overlap. See AS 15.13.400(4); 15.13.400(6)(A)(iii). Consider clarification of these definitions.

SB 284 (Section 11) would require the company or labor union to disclose the top five contributors to the expenditure. Section 11 does not clarify the proper disclosure if several contributors contribute the same amount of money. For instance, the company or labor union would have no statutory guidance if its top 10 contributors all contribute equally to the expenditure.

SB 284 (Section 4) would require the company or labor union to disclose each officer or director of the company or labor union. SB 284 allows entities other than corporations and labor unions to make expenditures in candidate elections. It may be appropriate to expand this disclosure requirement to more than officers and directors.

These are my initial impressions and do not hesitate to contact me with further questions.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 

John M. Ptacin
Assistant Attorney General
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