

SB

284

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

Date: February 23, 2010

To: Senator Linda Menard, Chair
Senate State Affairs Committee

From: Senator Hollis French *hsf*

RE: Request for Hearing - Senate Bill 284 Campaign Expenditures



This is a request that you schedule a hearing on SB 284 Campaign Expenditures at the earliest possible date.

I have attached a sponsor statement, a copy of the bill, a sectional, several pertinent legal opinions and a few related press articles. Witnesses will include attorneys from Legislative Legal Services, the Alaska Department of Law, a representative of the Alaska Public Offices Commission and others. A list will be forwarded to your staff shortly.

If you have any questions about the legislation, please contact Cindy Smith in my office at 465-6641.

I appreciate your consideration.

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
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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 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 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 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, 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 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

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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.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 284
 () Publish Date: _____

Identifier (file name) SB284-DOA-APOC-02-24-10
 Title "An Act relating to state election campaigns ..."
 Sponsor (S) JUD
 Requester (S) STA

Dept. Affected: Administration
 RDU AK Public Offices Commission
 Component AK Public Offices Commission
 Component Number 70

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	131.2		78.7	78.7	78.7	78.7	78.7	78.7
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	131.2	0.0	78.7	78.7	78.7	78.7	78.7	78.7

Estimate of any current year (FY2010) cost: _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB284
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts							
1003 GF Match							
1004 GF		0.0					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on the division.

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

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

LEGAL SERVICES

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MEMORANDUM

January 25, 2010

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

TO: Representative Jay Ramras
Attn: Jane Pierson

FROM: Alpheus Bullard *AB*
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

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

If I may be of further assistance, please advise.

TLAB:plm
10-035.plm

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.

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

JUNEAU EMPIRE

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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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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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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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Citizens United: Questions and Answers *Public Policy and Law Alert*

by Tim L. Peckinpugh, Stephen P. Roberts . February 12, 2010

The Supreme Court's holding in *Citizens United v. FEC* released on January 21, 2010 resolved the narrow issue of whether a corporation may make previously prohibited independent expenditures directly advocating for or against a federal candidate. The opinion, however, generated many questions as to its broader implications and new requirements for compliance. Basic answers to those most-often asked questions are provided below, and we are available to answer questions related to specific situations.

1) Will foreign corporations based outside the U.S. or those with a foreign connection now be able to make independent expenditures?

No. The Supreme Court neither considered nor overruled the still-valid portion of existing law that prohibits a "foreign national" from making a direct or indirect contribution to a campaign for federal, state or local election. A foreign national is defined, in part, as "*a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.*" 2 U.S.C. § 441e; 22 U.S.C. § 611(b); 11 C.F.R. § 110.20(a)(3) (emphasis added). Foreign nationals are further prohibited from making any "expenditure, independent expenditure, or disbursement" in connection with a federal, state or local election. 11 C.F.R. § 110.20(f).

2) Will U.S. subsidiaries of foreign corporations be exempt?

Yes. The definition of "foreign national" exempts any person that is "not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States." 22 U.S.C. § 611(b)(2). The Federal Election Commission ("FEC") has determined that this exemption includes a U.S. corporation that is a subsidiary of a foreign corporation, so long as the foreign parent does not finance U.S. political

activities and no foreign national participates in any decision to make expenditures. Many of the legislative proposals that "respond" to *Citizens United* seek to tighten or close this exemption.

3) Will the application of the law apply equally to labor unions?

Yes. The Court's decision discusses the ban on independent expenditures by corporations and labor unions interchangeably, although it stops short of explicitly invalidating the ban for labor unions (as the facts of the case applied only to corporations). In his concurrence, Chief Justice Roberts stated that "Congress may not prohibit political speech, even if the speaker is a corporation or union." The FEC has announced that it will no longer enforce statutory prohibitions against independent expenditures by either corporations or labor unions.

4) What information must be disclosed by corporations making independent expenditures?

Existing disclosure and disclaimer requirements remain intact after *Citizens United*.

Currently, any entity, including a corporation that spends more than \$10,000 per year on electioneering communications, must file a disclosure statement with the FEC, sometimes within 24 hours of the date of a communication's first public dissemination. That disclosure must state who makes the expenditure, the amount, the election to which the communication was directed, and the names of those entities donating \$1,000 or more to the entity making the disbursements for that communication. Furthermore, a corporation (or any non-candidate funding an electioneering communication) must state at the end of a television or radio advertisement that "*ABC Corporation* is responsible for the content of this advertising" and must do so in a clear, direct way pursuant to certain technical requirements.

Disclosure requirements differ based on the type of independent expenditure; however, most independent expenditures must ultimately be reported to the FEC. The FEC has made clear that corporations and labor unions must continue to report their independent expenditures as before.

Practically speaking, corporations will be required to answer for the content of any independent expenditures. In deciding whether to make this type of independent expenditure, a corporation's board must consider whether it is good business to stand by its political independent expenditures.

5) How is "coordination" defined for the purpose of proving whether an expenditure is truly independent?

Problematically, *Citizens United* places considerable weight on a shaky, unsettled portion of FEC regulations. At the time of the decision, the definition of "coordination" was still under development for determining whether a particular communication is independent, and thus permissible for a corporation to make, or is coordinated, and thus prohibited. On October 8, 2009, the FEC had begun its third round of rulemaking to resolve this precise problem. After the decision, the FEC issued a supplemental notice of rulemaking and sought additional public comment.

As the law now stands, the FEC determines "coordination" for a communication through a multi-prong test determining the source of the payment for the communication, content of the communication and conduct of those entities behind the communication. The existing definition of "coordination" is a communication "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or their agents, or a political party committee or its agents."

6) Will corporations be able to deduct political independent expenditures as business expenses?

No. Political expenditures are not currently deductible under the "ordinary and necessary" business expenses, and the Court's decision in *Citizens United* has done nothing to change that longstanding rule.

7) What are possible legislative responses?

In just the short time since the decision, the legislative response to this ruling has been considerable. For instance, one Member of Congress has already introduced a constitutional amendment that would restrict all corporations and labor organizations from making independent expenditures. Another proposal would require a corporation's CEO to appear on an advertisement "approving" its content and declaring the percentage of a corporation's total treasury spent on that independent expenditure.

Members have also discussed a number of less drastic new prohibitions on corporate speech. For instance, some have argued that the traditional ban on independent expenditures be maintained for corporations which employ or retain Washington lobbyists, have a government contract, or receive

government subsidy or bailout funds. Also proposed are corporate governance reforms that would require a corporation to first obtain majority shareholder approval before funding independent political speech.

The most likely proposal to gain bipartisan support is a collection of tougher restrictions on "foreign national" political participation through their U.S. subsidiaries.

8) Should corporations with PACs now alter their PAC budgets to plan for expenditures in line with this decision?

No. While this decision clears the way for a corporation to make an *independent* expenditure, such as television or radio advertising, that directly supports or advocates for or against a candidate, a corporation still may not use its general treasury funds to make a *direct contribution* to a candidate or party. The PAC remains the only method by which a corporation, or rather its donor employees and shareholders, may make a contribution to a candidate. Moreover, the corporate connected PAC could become even more relevant as a candidate could be pressured to raise even more "hard money" than ever before to defend themselves against independent expenditure advertising campaigns.

9) When will FEC issue guidance, and why does it matter?

In the wake of the decision, the FEC has already issued public guidance on which parts of existing law it will no longer enforce, begun new rulemakings and extended others, and instructed corporations and labor unions to continue to report independent expenditures as before. Until the FEC issues guidance or rules outlining additional specifics of compliance with the Supreme Court's ruling, as well as clarifies whether any additional restrictions on disclosure may be considered with regards to how an independent expenditure must be reported, a corporation making such expenditures may be at risk of enforcement action by the FEC.

The FEC may consider such regulations for a lengthy period of time. The FEC is engaged in multiple rulemakings related to a separate court ruling, and it recently reopened public comment on its proposed definition of "coordinated." As such, it may be several months before the FEC completes any rulemakings required by *Citizens United*. However, increased pressure to have rules in place in advance of the 2010 general election may encourage the FEC to act quickly in resolving uncertainty around its enforcement of *Citizens United*. For instance, on the day of the decision the FEC announced

that it would issue guidance in accordance with the decision "as soon as possible." The FEC Chairman reiterated his intent to issue expedited guidance at a recent Commission meeting.

10) How will corporations likely take advantage of their opportunity to make independent political expenditures?

Just because a corporation may make an independent direct advocacy expenditure doesn't mean that it should. Since the entity or entities financing independent expenditures must be disclosed, a corporation leading the way against a particular candidate risks alienating a significant block of its potential customer or shareholder base. Moreover, upon the first major corporate-funded public communications airing, media coverage is likely to focus on the corporation's involvement in the campaign rather than the content of any advocacy.

Therefore, most corporations will probably proceed cautiously. If such independent expenditures are made, groups of corporations within an industry may form coalitions or use existing trade associations to support candidates favorable to policy positions that affect the group as a whole. While corporations that contribute to these expenditures might still be disclosed, this indirect approach can provide sufficient cover such that no single contributing entity receives the bulk of public scrutiny.

Corporations could further lower their profile in such cases by not making contributions specific to a particular expenditure by that third-party corporation. Such independent expenditures can also take the form of advertisements in "under-the radar" sources, such as ideologically-based talk radio, web-based ads or phone banks. Since state and local laws preventing corporate political expenditures will also likely be repealed as a result of *Citizens United*, small corporations may also become involved in state and local races through regional media.

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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 Finance 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. (§163-278.82)</p> <p>The term "prohibited source" means any corporation, insurance company, labor union, or professional association. (§163-278.80(4))</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 (§163-278.19(a)(1))</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. (§16.1-08.1-03.3)</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.. (§3599.03)</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. (§3517.1011(H))</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. (§17-25-10.1(h))
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. (§12-27-18) "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 (§12-27-1(16))
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. (§2-19-132(a))
Texas	A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter. (Elec. Code §253.094)
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. (§3-8-8)
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. (§11.38)
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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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-LS1448\A)

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

FROM: Alpheus Bullard *TAB*
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.

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/19/10

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/2/10

State Affairs Committee considered SENATE BILL NO. 284

SB 284 CAMPAIGN EXPENDITURES

"An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting and disclosure of expenditures and independent expenditures, the filing of reports, and the identification of certain communications in state election campaigns; and providing for an effective date."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


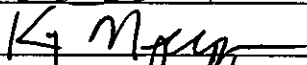
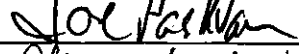
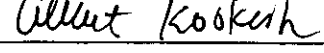

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Elections	02/26/10			X	
APOC	02/24/10	X			

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	✓			
	Meyer	✓			
	PASKVAN	X			
	Kookesh	X			
CHAIR: 	MENARD	✓			