

Los Angeles City Ethics Commission
SPECIAL BULLETIN

February 16, 2010

**Ban on Use of Corporate and Union Treasury Funds
for Express Advocacy in Los Angeles City Campaigns
No Longer Enforceable In Wake of *Citizens United***

On January 21, 2010, the U.S. Supreme Court issued its 5-4 decision in *Citizens United v. Federal Election Comm'n*, 558 U.S. ___ (2010). In its ruling, the Court struck down a longstanding federal statutory ban on the use of corporate treasury funds to make expenditures in connection with federal elections. The Court's decision directly affects a similar provision of Los Angeles City law, Los Angeles Municipal Code (LAMC) section 49.7.26.2. The City Ethics Commission has developed this Special Bulletin to provide clear information about the impact of the Court's decision on the enforceability of this provision of City law.

Background on Citizens United v. FEC

For over 60 years, federal statutory law has prohibited corporations and unions from using their general treasuries to make expenditures in connection with federal elections. In 2002, pursuant to the Bipartisan Campaign Finance Act (BCRA), Federal law was extended to ban corporate and union spending from their treasuries on "electioneering communications." Under federal law, an "electioneering communication" is defined to be "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election or 60 days of a general election, is publicly distributed, and be can be received by a threshold number of persons depending on the office sought. Spending that is done in coordination or consultation with a candidate is treated under federal, state, and local laws as a contribution and is limited. Contribution limits were not at issue in this case.

The main issue before the Court in this case was whether the government could prohibit a corporation from using its treasury funds for political expenditures without violating the First Amendment. During the 2008 presidential campaign, Citizens United, a non-profit corporation, wanted to promote and air a documentary entitled *Hilary: the Movie* as a cable-based video-on-demand but believed those actions would be prohibited by the

federal ban on corporate electioneering communications. Citizens United filed suit in federal district court claiming that the federal spending ban and disclosure and disclaimer requirements for electioneering communications contained in the Bipartisan Campaign Reform Act of 2002 were unconstitutional as they applied to *Hillary: the Movie*. The district court upheld the federal laws, and Citizens United appealed the decision to the Supreme Court.

The Supreme Court concluded that the federal spending ban could not be applied to *Hillary: the Movie* and also found the BCRA provision and the pre-existing ban on corporate expenditures unconstitutional. In reaching that conclusion, the Court found that the government may not suppress political speech on the basis of a speaker's identity and that the federal government's political spending ban was an impermissible restriction on that speech. Similarly, the Supreme Court found that a political action committee (PAC) is not a sufficient alternative because, it concluded, PACs are separate entities, are expensive to administer, and are subject to extensive regulation and therefore still impose impermissible burdens on independent political spending.

The Court further noted that speech is vitally important to democracy and to the electorate's ability to hold public officials accountable to the people. The Court said that the government may not "deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration." Additionally, the Court found, "voters must be free to obtain information from diverse sources in order to determine how to cast their votes." The Court also specifically addressed the First Amendment rights of corporations in the political context. Like individuals, the Court said, corporations contribute to political discourse and help disseminate information and ideas. Therefore, the Court concluded, a corporation should not be treated differently from individuals simply because it is a corporation.

The Court did uphold federal laws regarding disclosure of and disclaimers on electioneering communications as they apply to the movie *Hillary* and advertisements for the movie. For example, persons who make expenditures of \$10,000 or more in a calendar year for electioneering must report their activity within 24 hours of each disclosure date. In addition, radio and television communications related to federal elections must identify who paid for the communication and who was responsible for its content.

In upholding the federal disclosure and disclaimer laws as applied to *Hillary*, the Court noted that these requirements may burden speech, but they do not prevent anyone from speaking. The Court noted that disclosure helps to fully inform the voters about who is speaking about a candidate shortly before an election and that "disclosure is a less-restrictive alternative to more comprehensive regulations of speech." With regard to corporate speech and disclosure, the court stated, "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Impact of Citizens United on LAMC Section 49.7.26.2

Following the City's 2001 elections, the City of Los Angeles adopted LAMC section 49.7.26.2. This section provides the following:

Limitations on Certain Expenditures by Corporate or Union Treasuries

- A. No labor organization or for-profit business corporation may make a payment to expressly advocate the election or defeat of one or more clearly identified candidates for elective City office from the treasury of that organization or corporation.
- B. This section does not prohibit a labor organization or for-profit business corporation from establishing a separate, segregated fund to be used for political purposes, or from making payments to that fund for the administration of the fund. A labor organization or for-profit corporation which has established such a fund may solicit contributions to that fund from its individual stockholders, officers, directors, employees, or members, and their spouses; and it may use money in the fund to make contributions or independent expenditures in connection with elections, including the election of Mayor, City Attorney, Controller, and Member of the City Council.
- C. This section does not prohibit the publication or broadcasting of news items or editorial comments by any news or broadcast media.
- D. For purposes of the prohibition of this section, payments from the treasury of a union for communications to its members and employees or a for-profit corporation for communications to its shareholders and employees that are not behested by a candidate shall not be prohibited.¹

The *Citizens United* case constitutes compelling legal authority to conclude that a challenge to LAMC section 49.7.26.2(A) on constitutional grounds could not be successfully defended. Similar to sec. 441B of United States Code title 2, which prohibited corporations and unions from using their general treasuries in connection with federal elections, LAMC section 49.7.26.2(A) has prohibited the use of corporate and union treasury funds to expressly advocate the election or defeat of City candidates. Therefore, in light of this legal precedent, the City Ethics Commission has concluded that section 49.7.26.2(A) should not be enforced at this time.

¹ City law, therefore, has permitted for-profit corporations and labor organizations to create separate political funds that can pay for express advocacy related to City elections, and it does not ban use of treasury funds to communicate solely to its membership, shareholders, or employees, so long as those expenditures are not done in coordination or consultation with—that is, “behested” by—a City candidate.

Consequently, to provide clear guidance to those who may wish to be involved in upcoming City elections, the City Ethics Commission took action at its meeting on February 9, 2010, to clarify that:

- (1) In the wake of the *Citizens United* ruling, the City Ethics Commission will no longer enforce Los Angeles Municipal Code section 49.7.26.2(A) that bans for-profit business corporations and labor organizations from making payments to expressly advocate the election or defeat of one or more clearly identified candidates for elective City office with treasury funds of that corporation or organization; and
- (2) All of the contribution limits and disclosure and disclaimer requirements of City law remain in effect and remain unchanged.

A copy of the [Resolution](#) adopted by the City Ethics Commission can be accessed at the Commission's website. For additional information about the City's campaign finance laws, please contact the City Ethics Commission at (213) 978-1960.

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