

SUPREME COURT, STATE OF COLORADO 2 East 14 th Avenue, 4 th Floor Denver, CO 80203	
IN RE: INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR. CONCERNING THE EFFECT OF <i>CITIZENS UNITED</i> v. <i>FEDERAL ELECTION COMMISSION</i>, 558 U.S. ____ (2010), ON CERTAIN PROVISIONS OF ARTICLE XXVIII OF THE CONSTITUTION OF THE STATE OF COLORADO	<div style="text-align: center;">▲ COURT USE ONLY ▲</div> Case No.: 10SA_____
<div style="text-align: center;">INTERROGATORIES PURSUANT TO ARTICLE VI, SECTION 3 OF THE CONSTITUTION OF THE STATE OF COLORADO</div>	

For the reasons set forth herein, I, Bill Ritter, Jr., Governor of the State of Colorado, submit the following interrogatories to the Colorado Supreme Court pursuant to Section 3 of Article VI of the Colorado Constitution of the State of Colorado. The interrogatories embody questions of law concerning the impact of *Citizens United v. Federal Election Comm’n*, 558 U.S. ____ (No. 08-205, January 21, 2010), on the independent expenditure and electioneering provisions of Colo. Const. Art. XXVIII, Campaign and Political Finance.

BACKGROUND

In 2002, Colorado voters amended the Colorado Constitution to add provisions governing campaign finance. The voters specifically prohibited

corporations and labor organizations from expending money from their general treasuries for independent expenditures and funding for electioneering communications by corporations and labor organizations. Colo. Const. art. XXVIII, §§ 3(4)(a) and 6(2).

In *Citizens United*, the United States Supreme Court declared that prohibitions in federal law against the use of a corporation's general treasuries for independent expenditures and electioneering communication expenditures violate the First Amendment. In particular, the Court concluded "that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." *Citizens United*, slip op. at 50.

DISCUSSION

Citizens United casts doubt on the continued validity of state constitutional prohibitions against independent expenditures and electioneering funding. The Secretary of State has informed me that he has received communications threatening lawsuits seeking a declaration that Colorado's prohibitions are unconstitutional.

Interrogatories pursuant to art. VI, § 3 "must relate to purely public rights, be propounded upon a solemn occasion, and possess a peculiar or

inherent importance not belonging to all questions of the kind.” *In re Lieutenant Governorship*, 129 P. 811, 813 (Colo. 1913). Interrogatories propounded by the executive “must be exclusively *publici juris*.” *Id.* The interrogatories below satisfy all of these requirements. The restrictions on corporate independent expenditures in article XXVIII implicate constitutional rights that the United States Supreme Court had not acknowledged prior to *Citizens United*. Insofar as the Colorado Constitution restricts independent corporate expenditures on political campaigns, it now appears to run afoul of the First Amendment.

Unless it is clarified by this Court, the apparent inconsistency between certain portions of article XXVIII and the First Amendment is likely to cause widespread confusion as the election season begins. A general election will be held this year, and the process of selecting candidates has begun. Precinct caucuses and county assemblies begin in March 2010, and party primaries are scheduled for August 2010. §§ 1-3-102(1)(a)(1), 1-4-602(1)(a)(I), Section 1-4-101(1), C.R.S. (2009). Until the impact of *Citizens United* is clarified, local and statewide candidates, as well as the potential sources of independent expenditures, may face uncertainty as to the legality of their campaign activities under Colorado law.

Because the campaign finance provisions at issue are part of the Colorado Constitution, they lie outside the General Assembly's legislative purview. When a law appears to be unconstitutional, the General Assembly may amend or repeal the law. However, when the validity of an existing state constitutional provision is called into question, no timely legislative remedy exists.¹ The ultimate authority to construe the Colorado Constitution lies with the courts. *Danielson v. Dennis*, 139 P.3d 688, 690-91 (Colo. 2006); see *Morrissey v. State*, 951 P.2d 911 (Colo. 1998) (declaring term limits provision unconstitutional). Given that the legislature lacks the authority to implement the holding of *Citizens United*, the Court's timely intervention is necessary to ensure that Colorado law remains consistent with the First Amendment.

Absent this Court's intervention through the exercise of its original jurisdiction, the State anticipates imminent and multiple lawsuits in both state and federal courts. The Tenth Circuit has ruled that a person has suffered an injury-in-fact if the person shows an appreciable threat of injury flowing from a statute, even when the state enforcement officer has stated that he will not enforce the measure. *Wilson v. Stocker*, 819 F.2d 943, 947

¹ The General Assembly could conceivably refer a proposed constitutional amendment to the general electorate pursuant to Colo. Const. art. XIX, § 2. This potential solution, however, would not be timely, because it would appear on the November 2010 ballot. Nor would its outcome be certain.

(10th Cir. 1987). The Secretary of State's rulemaking authority standing alone is, thus, an insufficient remedy.

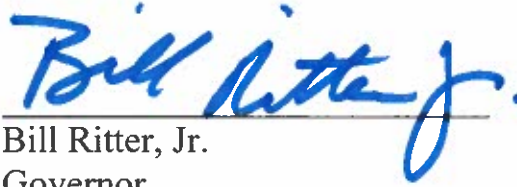
INTERROGATORIES

A delay in resolving the questions raised by *Citizens United* will cause confusion and uncertainty regarding fundamental First Amendment protections. Given that election season has already begun, the public impact of continued uncertainty will be substantial and ongoing. For these reasons as well as those outlined above, I submit the following interrogatories to the Supreme Court for its opinion, and certify that they are "important questions upon solemn occasions," as set forth in art. VI, § 3 of the Colorado Constitution:

1. In light of the U.S. Supreme Court's ruling in *Citizens United v. Federal Elections Commission*, 558 U.S. ____ (No. 08-205, January 21, 2010), is Section 6 (2) of Article XXVIII of the Colorado Constitution unconstitutional under the First Amendment of the United States Constitution as Section 6 (2) relates and applies to "funding for electioneering communications" by:
 - A. Corporations?
 - B. Labor organizations?
2. In light of the U.S. Supreme Court's ruling in *Citizens United v. Federal Elections Commission*, 558 U.S. ____ (No. 08-205, January 21, 2010), is Section 3 (4) (a) of Article XXVIII of the Colorado Constitution unconstitutional under the First Amendment of the United States Constitution as Section 3 (4) (a) relates and applies to "expenditures expressly advocating the election or defeat of a candidate" by:
 - A. Corporations?
 - B. Labor organizations?

Dated this ninth day of February, 2010.

Respectfully Submitted,

A handwritten signature in blue ink, reading "Bill Ritter, Jr.", written over a horizontal line.

Bill Ritter, Jr.
Governor