



May 7, 2010

Legal and Regulatory Services Administration  
Michigan Department of State  
Richard H. Austin Building, 4<sup>th</sup> floor  
430 West Allegan Street  
Lansing, Michigan 48919

RE: Draft response to the Michigan Chamber of Commerce's request for a Declaratory Ruling of February 19, 2010

Gentlepersons:

The Michigan Department of State's draft response to the February 19<sup>th</sup> request from the Michigan Chamber of Commerce for a Declaratory Ruling has two fundamental flaws that assure that corporate campaign expenditures in Michigan State campaigns will be made with no meaningful accountability. The reasoning of the draft response is wrong, and the results of it will inflict long term damage on our state's democratic processes if not corrected.

First, the Department's fidelity to the Chamber of Commerce plea that seeks guidance for 'express advocacy' has no basis in the Michigan Campaign Finance Act (MCFA), 1976 PA 388, as amended. A reading of the law reveals that 'express advocacy' is neither language nor a concept found in the MCFA. In fact, the impact of the *Citizens United v. F.E.C.* decision is to allow corporate expenditures; and the definition of an expenditure from section (6)(2)(b) of the MCFA is more expansive than the definition of express advocacy derived from footnote 52 of *Buckley v. Valeo*. *Citizens United* should affect all communications in State campaigns where there is clear inference of support or opposition to a candidate, not just those that feature *Buckley's* magic words.

As noted in the Michigan Campaign Finance Network's first comment on the Chamber's request, Michigan's most competitive statewide elections over the past decade have been dominated by advertisements that are not found in the Department's campaign finance reporting system, and the Chamber is a major purchaser of those advertisements. Those electioneering expenditures would never pass the test of authentic issue advocacy as it is described in *Wisconsin Right to Life v. F.E.C.* Those advertisements are rife with the functional equivalent of express advocacy, which, in turn, is the functional equivalent of a clear inference of support or opposition to a candidate. Those communications are *de facto* corporate expenditures. Yet, the Department persists in ignoring them because they don't employ *Buckley's* magic words. That interpretation is stuck in the last century because it fails to consider the full body of the U.S. Supreme Court's campaign finance jurisprudence of the last decade.



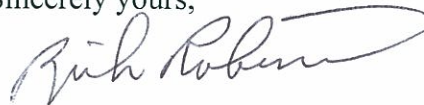
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The second fundamental flaw in the Department's interpretation is to allow the Chamber's impending political committee to exist outside of the 501 (c) (6) corporation, and claim that its sole source of funding is an undifferentiated general treasury. In the Michigan Campaign Finance Network's first comment on the Chamber's request, we provided you with copies of the Chamber's tax returns which show that the Chamber receives contributions for its electioneering expenditures, whether it identifies them as "ISS ADV SPECIAL DUES" (2004), or "SPECIAL MEMBERSHIP ASSESSMENTS" (2006). The electioneering expenditures the Chamber describes as issue advocacy have their own budget line, and quite certainly that line is not paid with membership dues, which are a deductible business expense for members, and also an element of the Chamber's general treasury. Issue Advocacy Special Dues are not comingled with membership dues to pay for electioneering expenditures. The Internal Revenue Service would not allow it.

The one established area in the MCFA where corporate expenditures have been allowed previous to this ruling is ballot committees, and there, according to section (3)(4) of the MCFA, a person that receives contributions to make expenditures is a committee. And as such, it should be reporting its activity in accordance with section 26 of the Act. It defies explanation that the Department's draft doesn't consider the Chamber's electioneering operation to be a committee. The Department's draft allows the Chamber's political contributors to assume the identity of the Chamber, and that should be prohibited by section (42)(3) of the MCFA.

The Department's draft gives guidance to the Michigan Chamber of Commerce that is not supported by statute or U.S. Supreme Court jurisprudence. That is a grievous disservice to the citizens of Michigan who look to the Department of State to exercise its full authority under the law to maintain a campaign finance system of transparency and accountability. Kindly review your positions in view of the text of the Michigan Campaign Finance Act, and give the citizens of this state the ruling they desire and deserve, so they can properly follow the money in Michigan politics.

Sincerely yours,



Richard L. Robinson  
Executive Director