



MICHIGAN  
CHAMBER  
OF  
COMMERCE

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Terri Lynn Land  
Secretary of State

February 19, 2010

The Honorable Terri Lynn Land  
Secretary of State  
Executive Office  
Richard H. Austin Building  
430 W. Allegan Street  
Lansing, MI 48918

Dear Secretary Land:

Re: Declaratory Ruling Request As A Result Of The United States Supreme Court Decision In  
*Citizens United v. Federal Election Commission*

Pursuant to Section 15(1) (e) and (2) of the Michigan Campaign Finance Act, P.A. 388 of 1976, as amended, MCL 169.201, *et seq.* (sometimes referred to as the "Act") and Rule 169.6 of the Michigan Administrative Code, this is a request for a Declaratory Ruling as to the applicability of the Act. Please note that Section 15(2) of the Act indicates that if the Michigan Department of State does not issue a Declaratory Ruling, the Michigan Department of State must at least issue an Interpretive Statement providing an informational response to the questions presented within the same time limitations applicable to a Declaratory Ruling.

**ACTUAL STATEMENT OF FACTS**

1. The Michigan Chamber of Commerce (the "Chamber") is a Michigan nonprofit corporation.
2. The Chamber is an interested person whose course of action would be affected by a Declaratory Ruling as to the applicability of the Act to these Actual Statement of Facts.
3. The Chamber is a trade association, the members of which consist of more than 7,000 entities, many of which are corporations.
4. On January 21, 2010, the United States Supreme Court issued its decision in *Citizens United v. Federal Election Commission*, which overruled its 1990 decision in *Austin v. Michigan Chamber of Commerce*. By overruling its 1990 decision in *Austin v. Michigan Chamber of Commerce*, the United States Supreme Court declared that Section 54(1) of the Act is unconstitutional to the extent that it prohibits independent expenditures by the Chamber; however, the prohibition against contributions from the Chamber to candidates and committees remains in effect.
5. The Chamber intends to register a "political committee" (as defined in the Act) under the Act called "Michigan Chamber PAC III".



6. Michigan Chamber PAC III will not be a separate segregated fund of the Chamber organized under Section 55 of the Act.
7. Like any other committee under the Act, Michigan Chamber PAC III shall be a distinct and separate entity. The funds and assets of Michigan Chamber PAC III shall not be commingled with the funds or assets of the Chamber, Michigan Chamber PAC, Michigan Chamber PAC II, or any other entity.
8. Contributions to Michigan Chamber PAC III shall be derived from the following sources:
  - a. Contributions from "persons" (as that term is defined in the Act) that were specifically solicited or received for the express purpose of making a contribution to Michigan Chamber PAC III ("Michigan Chamber PAC III Contributions").
  - b. Treasury funds of the Chamber, which shall mean all funds of the Chamber except Michigan Chamber PAC III Contributions. For the purposes of this Declaratory Ruling request, the term, "treasury funds" shall mean all funds of a person except those funds that were specifically solicited or received for the express purpose of making a contribution. Without limiting the generality of the term "treasury funds" as used in this Declaratory Ruling request, the term "treasury funds" shall include all funds paid to a person such as dues, assessments, gifts, vendor payments, refunds, rebates, or any other payment to the person received in the ordinary course of business.
9. In the event that Michigan Chamber PAC III receives a contribution derived from the treasury funds of the Chamber, Michigan Chamber PAC III will report the contribution as being made by the Chamber. In the event that Michigan Chamber PAC III receives a Michigan Chamber PAC III Contribution derived from the treasury funds of a person, Michigan Chamber PAC III will report the contribution as being made by such person.
10. The Chamber intends to make certain in-kind contributions to Michigan Chamber PAC III including, but not limited to, in-kind contributions with respect to the administration and solicitation of contributions to Michigan Chamber PAC III.

### DISCUSSION

On January 21, 2010, the United States Supreme Court issued its decision in *Citizens United v. Federal Election Commission*, which overruled its 1990 decision in *Austin v. Michigan Chamber of Commerce*. By overruling its 1990 decision in *Austin v. Michigan Chamber of Commerce*, the United States Supreme Court declared that Section 54(1) of the Act is unconstitutional to the extent that it prohibits independent expenditures by the Chamber; however, the prohibition against contributions from the Chamber to candidates and committees remains in effect. In addition, the decision in *Citizens United v. Federal Election Commission* upheld the disclaimer and disclosure requirements of the campaign finance laws.

Prior to *Citizens United v. Federal Election Commission*, those entities identified in Section 54 of the Act (the "Section 54 Entities") could make independent expenditures on behalf of, and direct contributions to benefit, ballot questions and ballot question committees. Consequently, *Citizens United v. Federal Election Commission* now allows Section 54 Entities to also engage in independent expenditure candidate activities, in addition to ballot question activities.

Therefore, the requirements applicable to Section 54 Entities with respect to independent expenditures on behalf of candidates should be the same rules applicable to Section 54 Entities with respect to independent expenditures on behalf of ballot questions. Without limiting the generality of the foregoing:

1. Section 3(4) of the Act provides in pertinent part:

"A person, other than a committee registered under this act, making an expenditure to a ballot question committee shall for that reason not be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee."

2. With respect to recording and reporting contributions, page 9 of the *Ballot Question Committee Manual* (Revised April, 2009), provides that if the contribution was derived from the treasury funds of an organization, the contribution is reported as being made by the organization and no other person:

"Record and report all contributions received from groups, businesses, firms or any other types of organizations that are not registered as a committee under this Act by amount, date received and the contributing organization's name and address."

### LEGAL QUESTIONS PRESENTED

1. Whether Michigan Chamber PAC III is permitted to register as a "political committee" (as defined in the Act) pursuant to the Act?
2. Whether Michigan Chamber PAC III may make "independent expenditures" on behalf of candidates (as defined in the Act) pursuant to the Act?
3. Whether Michigan Chamber PAC III may only engage in express advocacy activities for candidates by making independent expenditures pursuant to the Act?
4. Whether Michigan Chamber PAC III may make contributions to another political committee which contains funds derived from Section 54 Entities?
5. Whether Michigan Chamber PAC III will comply with the reporting provisions of the Act where the contributor to Michigan Chamber PAC III will be reported as the Chamber where the contribution to Michigan Chamber PAC III from the Chamber is derived from the treasury funds of the Chamber?
6. Whether Michigan Chamber PAC III will comply with the reporting provisions of the Act where the contributors to Michigan Chamber PAC III will be reported as the makers of the Michigan Chamber PAC III Contributions where the Michigan Chamber PAC III Contributions are derived from the treasury funds of the maker?

7. Whether the Chamber or the makers of the Michigan Chamber PAC III Contributions, by virtue of making these contributions to Michigan Chamber PAC III, will themselves trigger committee status under the Act?
8. Whether the Chamber or any other person may make in-kind contributions to Michigan Chamber PAC III including, but not limited to, in-kind contributions relating to the administration and solicitation of contributions to Michigan Chamber PAC III?
9. Whether there are any circumstances upon which a contribution to Michigan Chamber PAC III must be accompanied by a certified statement by an officer of the contributing person setting forth the full name and address, along with the amount contributed, of each person who contributed to the total amount of the contribution, where the contribution is derived from the treasury funds of a person?

To the extent that the Michigan Department of State declines to issue a Declaratory Ruling as to the above-referenced questions, please issue an Interpretive Statement in accordance with Section 15(2) of the Act.

Thank you for your consideration of our request. If you have any questions, or require any additional information whatsoever, please contact the undersigned.

Sincerely,



Robert S. LaBrant  
Senior Vice President, Political Affairs  
and General Counsel