

Opinions of the Colorado Supreme Court are available to the public and can be accessed through the Court's homepage at <http://www.courts.state.co.us> Opinions are also posted on the Colorado Bar Association homepage at www.cobar.org.

ADVANCE SHEET HEADNOTE
March 22, 2010

10SA43, In Re: Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Commission, 558 U.S. ____ (2010) on Certain Provisions of Article XXIII of the Constitution of the State of Colorado: First Amendment - Colorado Constitution - Campaign Finance

Pursuant to section 3 of Article VI of the Colorado Constitution, the Governor submitted two interrogatories to the Colorado Supreme Court on February 9, 2010, concerning whether various provisions of article XXVIII of the Colorado Constitution were unconstitutional in light of the United States Supreme Court's decision in Citizens United v. Federal Election Commission ___ U.S. ___, 130 S. Ct. 876 (2010),

The supreme court answered both interrogatories in the affirmative. It held that to the extent section 3(4) of article XXVIII of the Colorado Constitution makes it unlawful for a corporation or labor organization to make expenditures expressly advocating the election or defeat of a candidate, it violates the dictates of the First Amendment of the United States Constitution. Similarly, it held that, to the extent section 6(2) of article XXVIII of the Colorado Constitution makes it

unlawful for a corporation or a labor organization to provide funding for an electioneering communication, it violates the dictates of the First Amendment of the United States Constitution.

<p>SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203</p> <p>Original Proceeding Pursuant to Article VI, Section 3 of the Constitution of the State of Colorado</p>	<p>Case No. 10SA43</p>
<p>IN RE:</p> <p>INTERROGATORIES PROPOUNDED BY GOVERNOR BILL RITTER, JR., CONCERNING THE EFFECT OF <u>CITIZENS UNITED v. FEDERAL ELECTION COMMISSION</u>, 558 U.S. ____ (2010) ON CERTAIN PROVISIONS OF ARTICLE XXIII OF THE CONSTITUTION OF THE STATE OF COLORADO</p>	
<p style="text-align: center;">INTERROGATORIES ANSWERED IN THE AFFIRMATIVE EN BANC March 22, 2010</p>	

John W. Suthers, Attorney General
Daniel D. Domenico, Solicitor General
Maurice G. Knaizer, Deputy Attorney General
Monica M. Márquez, Deputy Attorney General
Matthew D. Grove, Assistant Attorney General
Denver, Colorado

Attorneys for Governor Bill Ritter, Jr., and Secretary of
State Bernie Buescher

Office of Legislative Legal Services
Charles W. Pike
Sharon L. Eubanks
Robert S. Lackner
Denver, Colorado

Attorneys for the General Assembly

Isaacson Rosenbaum P.C.
Mark G. Grueskin
Denver, Colorado

Buescher Goldhammer Kelman & Dodge P.C.
Joseph M. Goldhammer
Denver, Colorado

Attorneys for Colorado Education Association, School
District 14 Classroom Teachers Association, and Douglas
County Federation

Thomas B. Buescher
Denver, Colorado

Attorney for Colorado Professional Fire Fighters

Holland & Hart LLP
J. Lee Gray
Greenwood Village, Colorado

Attorneys for Colorado Common Cause

PER CURIAM.

Pursuant to section 3 of Article VI of the Colorado Constitution, the Governor submitted two interrogatories to this court on February 9, 2010, concerning the impact of Citizens United v. Federal Election Commission ___ U.S. ___, 130 S. Ct. 876 (2010), on the validity of various provisions of article XXVIII of the Colorado Constitution. The interrogatories are:

Interrogatory No. One:

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 communication" by:

- A. Corporations?
- B. Labor organizations?

Interrogatory No. Two:

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) of Article XXVIII of the Colorado Constitution unconstitutional under the First Amendment of the United States Constitution as Section 3(4) relates and applies to "expenditures expressly advocating the election or defeat of a candidate" by:

- A. Corporations?

B. Labor organizations?

We agreed to accept the Governor's interrogatories and ordered that the Governor, the General Assembly, the Attorney General, the Secretary of State, Colorado Common Cause, the League of Woman Voters, the Colorado Bar Association, and any other interested persons be permitted to file simultaneous Opening Briefs in the Supreme Court clerk's office, with simultaneous Answer Briefs to follow. We received briefs from Governor Bill Ritter, Jr., and Secretary of State Bernie Buescher; the Colorado Education Association, School District 14 Classroom Teachers Association, and the Douglas County Federation; the Colorado Professional Fire Fighters; and Colorado Common Cause. Rather than availing themselves of the opportunity to file Answer Briefs, all of the responding parties filed a Joint Motion To Close Briefing And Declare Case At Issue, agreeing that both of the interrogatories should be answered in the affirmative.

We answer the first interrogatory in the affirmative. To the extent that section 3(4) of article XXVIII of the Colorado Constitution makes it unlawful for a corporation or labor organization to make expenditures expressly advocating the election or defeat of a candidate, it violates the dictates of the First Amendment of the United States Constitution, in light of the United States Supreme Court's decision in Citizens United

v. Federal Elections Commission, ___U.S. ___, 130 S. Ct. 876 (2010).

We also answer the second interrogatory in the affirmative. To the extent that section 6(2) of article XXVIII of the Colorado Constitution makes it unlawful for a corporation or a labor organization to provide funding for an electioneering communication, it violates the dictates of the First Amendment of the United States Constitution, in light of the United States Supreme Court's decision in Citizens United v. Federal Elections Commission, ___ U.S. ___, 130 S. Ct. 876 (2010).