

## LEGISLATIVE REPORT

### **Executive Summary: Citizens United vs. FEC**

On January 21, 2010 the Supreme Court issued its long awaited decision in *Citizen's United v. Federal Election Commission*. At issue in the case was whether Citizen's United, a nonprofit corporation that receives donations both from individuals and for profit corporations, could distribute in various ways a movie entitled *Hillary: The Movie*. *Hillary* is about former Senator and presidential candidate Hillary Clinton, and is quite critical of her and her capability and qualifications to serve as President. Citizen's United proposed to distribute *Hillary* in close proximity to various 2008 primary elections. Citizen's United brought this case seeking to overturn provisions of the Federal Election Campaign Act that would have prohibited distribution of *Hillary* because of the influence it may or was intended to have on federal elections and because Citizen's United is funded, in part, by for profit corporations. Federal election law generally prohibits corporations from using corporate treasury funds to make contributions to, or expenditures in support of or opposition to, federal candidates. Corporations are permitted to establish and operate PACs, separate segregated funds consisting only of personal funds contributed voluntarily by individual supporters, for use for political purposes.

In a ruling that can quite properly be characterized as revolutionary, the Supreme Court overturned decades of precedent, explicitly overruled two of its own relatively recent rulings, and declared that corporations have First Amendment rights to participate in federal election campaigns by making "independent expenditures" using corporate treasury rather than PAC funds. While the decision and the various concurrences and dissent are lengthy and complex, the bottom line is simple and straightforward: Corporations may now make unlimited "independent expenditures," that is, expenditures to create and publicly disseminate communications that expressly advocate the election or defeat of federal candidates using corporate treasury funds. Many pundits believe this decision may have significant impact on federal elections because corporations generally have more access to funds that can be used for political purposes than do PACs, who may solicit and receive contributions only from certain groups of individuals donating personal funds.

The corporate communications permitted under this ruling must, however, continue to be made independent of, and not in cooperation or collaboration with, candidates and their campaigns or political parties. Both for profit corporations and not for profit corporations such as NAR, may now, for example, publish print ads or broadcast electronic communications that are directed to and received by the general public and urge recipients to vote for specifically identified candidates for federal office. Corporate "issue advocacy" communications, that address policy or legislative issues but that also identify and positively or negatively refer to federal candidates in relation to such issues, are equally immunized from regulation under this ruling.

The language used by the Court to condemn, under the First Amendment, any prohibition of expenditures by corporations is quite broad. The Court noted that "Political speech 'is

indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual”, and that “Government may not suppress political speech on the basis of the speaker’s corporate identity.” Thus, this sweeping conclusion would almost certainly apply with equal force to any state-imposed prohibition of political expenditures by corporations. That said, the implications of this decision on the campaign finance laws of the various states will have to be evaluated in light of the specific laws of those states.

The Court’s ruling also considered certain disclaimer and disclosure/reporting requirements applicable to communications by corporations regarding federal candidates, and sustained the constitutionality of those requirements. Corporations that engage in expressive conduct regarding federal candidates may thus be required to include disclaimers identifying the sponsor and reporting such expenditures.

The decision addresses only the constitutionality of corporate participation in federal elections by making public communications that advocate the election or defeat of federal candidates. It does not address, and therefore does not alter, other provisions of the Federal Election Campaign Act. The prohibition against direct contributions by corporations to federal political parties, candidates, or campaigns, and the limitations and restrictions imposed on solicitation of contributions to, and contributions and expenditures by, political action committees such as RPAC, are unaffected by the Court’s decision.

For more information about the *Citizen’s United* ruling contact Ralph Holmen, NAR Associate General Counsel, at 312/329-8375. The court’s complete opinion is available at <http://www.supremecourtus.gov/opinions/09slipopinion.html>.

### **Second Republican announces for Soles’ seat**

A Brunswick County veterinarian plans to run for state Sen. R.C. Soles’ seat in the upcoming election. Bill Rabon, a Republican, announced today he will run for the district that covers Brunswick, Columbus and Pender counties.

Soles, a Democrat, was recently indicted on assault charges and has announced he will not seek re-election. Rabon will face former Star News reporter Bettie Fennell in the Republican primary in May.

Rabon, 58, is a partner in Southport Animal Hospital, Brunswick Animal Hospital and Oak Island Animal Hospital, according to the release. He is the vice chairman of the Brunswick Community College Board of Trustees and was appointed by former Gov. Jim Martin as chairman of the Cape Fear Pilotage and Navigation Committee. He served on that committee for seven years. Rabon is a member of the Southport-Oak Island Chamber of Commerce, the Southport Rotary Club and the Boy Scouts of America’s Cape Fear Council. He is also a life member of the National Rifle Association and a Ducks Unlimited sponsor. Rabon, a native of Columbus County, has never run for political office.

### **Tax on Services Continues to be Discussed in the NC General Assembly**

Expanding the sales tax to services was once again the focal point of a joint meeting of the Senate and House Finance Committees. Legislative staffers discussed the implications of applying the sales tax to a list of different services, including building repairs, landscaping services and exterminating services. While there was no specific discussion of taxing REALTORS®, a committee handout did include “property sales agents” and “rental agents” on the list of 183 services that could be taxed.

However, the scuttlebutt is the mortgage deduction for second homes is in danger of elimination. The consequences of that decision would severely hurt our market in Brunswick County.

### **Homeowners' Insurance**

The North Carolina Court of Appeals heard arguments this week in the lawsuit by coastal communities trying to overturn the insurance rate increases enacted in 2008 by former Insurance Commissioner Jim Long and the North Carolina Rate Bureau. The 2008 rate changes for policies written by both private insurance companies and the Beach Plan, the state's property insurance provider for coastal properties, increased homeowners' insurance premiums by up to almost 30 percent along the coast. This change also provided for a decrease in rates in the western part of the state. The municipalities argued the increases were approved without notice to coastal residents of the requested increase and that the increases were unreasonably high. Attorneys for the Department of Insurance and the Rate Bureau argued that rate settlements could not be appealed. A decision is expected later this year.

As you will recall, the General Assembly enacted a bill to revise the Beach Plan. The NC Association of REALTORS® successfully lobbied for several significant changes to the legislation in both the House and Senate. With these improvements, the bill made huge strides in improving not only the Beach Plan but the property insurance market for the entire state. Since the enactment of **HB 1305 (Beach Plan Changes)**, AAA Insurance has entered the market, but State Farm decided to leave the barrier islands this week. We will keep you updated on the court's decision.

### **Flood Insurance Extended Through February**

The Defense Department spending bill recently signed into law, included a 2-month extension of the authority for the National Flood Insurance Program (NFIP). This gives Congress until February 28, 2010, to continue considering a range of reforms to strengthen NFIP's long-term financial viability. Without NFIP, property owners in federally designated areas across the nation would not be able to obtain a mortgage or flood insurance to protect their property. NAR will continue to work to extend the program until Congress takes up a long-term reauthorization and reform measure. For more information visit the following page: [Visit NAR's Natural Disaster/Flood Insurance homepage.](#)

**Environmental Protection Agency (EPA) regulations on Lead Repair, Renovation, and Painting (RRP).**

See EPA website at: <http://www.epa.gov/lead/pubs/renovation.htm>

"Contractors who perform renovation, repairs, and painting jobs in pre-1978 housing and child-occupied facilities must, before beginning work, provide owners, tenants, and child-care facilities with a copy of EPA's lead hazard information pamphlet [Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools \(PDF\)](#) (20 pp, 3.3MB) | [en español \(PDF\)](#) (20 pp, 3.2MB). Contractors must document compliance with this requirement? EPA's [pre-renovation disclosure form \(PDF\)](#) (1 pp, 36K) may be used for this purpose." **After April 22, 2010, federal law will require workers and contractors to be certified and to use lead-safe work practices.** To become certified, renovation contractors must submit an application and fee payment to EPA.