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## JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

Clearinghouse Rule 10-087

### **Report to the Legislature Clearinghouse Rule 10-087**

### **The Joint Committee for Review of Administrative Rules**

Produced pursuant to 227.19(6)(a), Stats.

Clearinghouse Rule 10-087, promulgated by the Government Accountability Board (GAB), creates rules for organizations making independent disbursements.

#### **Description of Problem**

At the request of Representative Jim Ott, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Clearinghouse 10-087 relating to independent disbursements on April 27, 2011. On January 21, 2010, the US Supreme Court ruled in *Citizens United v. FEC* that organizations including corporations were allowed to engage in independent expenditures, but allowed states to have disclosure and disclaimer requirements. The GAB prepared Clearinghouse Rule 10-087 to address the implications of the *Citizens United* court case.

#### **Arguments in Favor of Suspension**

- *There are two issues that are being dealt with by this rule. The first is placing proper registration requirements on corporations which were not questioned during the public hearing or executive session. The other is the expansion of the term organization to include any individual. Under this rule, any person spending more than \$25 for a political purpose would have to register with the GAB at a cost of \$100. This requirement would have grave first amendment ramifications.*
- *A person that makes a handful of buttons or a couple signs should not be treated the same as a political action committee spending millions of dollars to sway an election.*
- *The Citizens United case did not authorize the government to place registration burdens on all individuals as the GAB rule attempts.*
- *Questions were raised as to the authority of the GAB to issue this rule without an action of the legislature.*

### **Arguments Against Suspension**

- *Under the Citizens United case, the state is authorized to regulate independent expenditures for corporations and that is what this rule is trying to accomplish. Suspending the rule would restrict the GAB's ability to register corporate election activities.*
- *Without the promulgation of this rule, Wisconsin statutes would require that any corporation wishing to make an independent disbursement would have to first establish a committee which is in direct conflict with the Citizens United case.*
- *The general public has a right to know of anyone that is making an independent disbursement of \$25 or more.*

### **Action by Joint Committee for Review of Administrative Rules**

On June 2, 2011, the Joint Committee for Review of Administrative Rules held an executive session on Clearinghouse Rule 10-087. The committee passed the following motion on a 6-4 vote (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Taylor, Risser, Hebl, Kessler):

*“That the Joint Committee for Review of Administrative Rules objects to Clearinghouse Rule 10-087, pursuant to s. 227.19 (5) (d), Stats., on the grounds that the proposed rule imposes an undue hardship as stated in s. 227.19 (4) (d) 6., Stats.”*

On June 23, 2011, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Hebl, Taylor, Risser, Kessler) to introduce LRB 2253 and LRB 2254, which limits the GAB's ability to regulate registration, reporting, filing or accounting activities of a corporation or individual that is independent of a candidate. The bills were introduced as Senate Bill 139 and Assembly Bill 196.

Passage of one of the bills in support of the JCRAR objection would remove the GAB's ability to regulate independent expenditures of corporations and individuals.