

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC

ISSUE ALERT

To: New York ALEC Members
From: ALEC's Public Safety and Elections Task Force
Re: NY SB 101 and NY AB 696
Date: February 15, 2011

New York Senate Bill 101 and New York Assembly Bill 696 impede on rights protected by the First Amendment. This bill imposes oppressive and impractical requirements on corporations by requiring an annual shareholder vote in which a majority of shareholders must first choose to allow the corporation to make contributions or independent expenditures, and then determine a specific aggregate amount of funds that the business can spend in that calendar year. This bill restricts free speech and places discriminatory burdens on a vast array of corporations. Due to this unjust barrier to speech, **ALEC opposes the policies in NY SB 101 and NY AB 696.**

If SB 101 and AB 696 are passed, before a corporation can make a financial contribution to a political committee, candidate, party committee, or ballot referendum, the entities must at least annually obtain the authorization of a majority of their shareholders. These onerous requirements will deter and delay these entities from participating in political debate.

Not only do these burdensome requirements impede upon First Amendment rights, they are also unnecessary. Shareholders always have the option of voting out board members and removing management who engage in independent expenditures contrary to the interests of the company and its owners, or of passing shareholder resolutions to prohibit independent expenditures by corporations.

The provision also raises equal protection issues, because similar requirements are not imposed on unions. Exempting unions from arduous requirements is a hypocritical move that will silence some voices while allowing others. In the majority opinion in *Citizens United*, Justice Kennedy quoted the Court in an earlier decision, stating: **"The worth of speech 'does not depend upon the identity of its source, whether corporation, association, union, or individual.'"**¹

This strongly suggests that the courts are unlikely to uphold a law imposing a major burden on some entities, while allowing other incorporated entities and unincorporated associations to remain unburdened when it comes to political speech.

Senate Bill 101 and Assembly Bill 696 are dangerous bills which will trample upon the right to free speech in New York. Legislation punishing speech stifles uninhibited public debate and undermines the very purpose of the First Amendment. NY SB 101 and NY AB 696 will impose burdensome and impractical requirements on corporations which will limit the free and robust debate of these entities. For all these reasons, **ALEC opposes the policies in SB 101 and AB**

696.

Should you have any questions on this important issue, please contact Courtney O'Brien at cobrien@alec.org or 202-742-8504.

¹ *Bellotti*, 435 U. S., at 777 (1978) as quoted in *Citizens United*

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