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Life After *Citizens United*

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The U.S. Supreme Court's January 21, 2010, ruling in *Citizens United v. FEC* is certain to have a profound effect on the laws governing corporate political activity in nearly half the states. The court ruled that the federal government may not prohibit direct corporate and union spending in advertising for candidate elections. While the ruling does not directly affect state laws, there are at least 23 states that currently prohibit or restrict corporate and union spending on candidate elections. It is very likely that these states will act to either repeal or re-write these laws, or face legal challenge under the new standard set by *Citizens United*. Furthermore, it is likely that states will elect not to enforce these laws from this point forward, which will radically change the political landscape as we head into the 2010 elections. It is important to note that the *Citizens United* decision does not strike down bans on corporate and union contributions to candidates, which currently exist in 23 states. Only the ban on direct corporate and union spending on campaign advertising is addressed by this decision.

States Respond to *Citizens United*

Connecticut, North Dakota, Ohio, Pennsylvania -- legislators and state officials are reviewing the case and have not yet decided how to proceed.

Alaska -- The Attorney General issued an opinion on February 22, stating that Alaska's ban on corporate and union independent expenditures are likely unconstitutional in view of *Citizens United*. These bills include HB 358, HB 401, HB 409, and SB 284. All would include independent expenditures by corporations and unions in the current disclosure requirements, and clarify attribution requirements for advertisements.

Arizona - SB 1444, introduced on February 16, 2010, would require corporations and labor unions that make independent expenditures in candidate campaigns to register and file disclosure reports. HB 2788 is a companion bill.

Colorado governor Bill Ritter has asked the state's supreme court to evaluate the constitutionality of two provisions of the state's constitution that appear to be directly affected by *Citizens United*. Also, the state Republican Party has announced its intention to file suit against Colorado's law. It is possible that the suit could challenge a broader scope of the law than the two sections that are affected by *Citizens United*.

Iowa -- the director of the Ethics and Campaign Disclosure Board has sent an e-mail to legislators telling them that *Citizens United* effectively overturns Iowa law. SF 2354, introduced on February 15, 2010, requires corporations to obtain permission from a majority of their shareholders prior to making an independent expenditure, requires corporations to report their independent expenditures to the Ethics and Campaign Finance Disclosure Board, prohibits coordination between candidates and corporations, and requires certain attributions on corporate-funded advertisements.

Maryland -- HB 616, introduced on February 3, 2010, would require stockholder approval and public disclosure of corporate independent expenditures in excess of \$10,000. HB 690 and SB 691 would prohibit government contractors from making independent expenditures. HB 986 and SB 570 would require board of director and stockholder approval for corporate independent expenditures, and would prohibit the distribution of material that is not true. HB 1029 and SB 543 would establish disclosure requirements for corporate independent expenditures. SB 601 would prohibit corporate contributions to candidates and corporate-funded independent expenditures. HB 1225 would require that corporate-sponsored ads include an attribution statement.

Michigan -- the secretary of state has posted SF a detailed description of how *Citizens United* affects the state, including an FAQ section.

Minnesota -- SF 2353, introduced on February 4, 2010, would repeal the ban on independent expenditures by corporations.

Montana -- the attorney general has said the state's ban on corporate expenditures will stay in place until it is challenged.

North Carolina -- the executive director of the State Board of elections has said that the law appears to be unenforceable, but they are still working to understand the full meaning of the decision.

Oklahoma -- the Ethics Commission is working on amendments to change and remove the relevant portions of state rules.

South Dakota - SB 165, which was deferred to the 41st legislative day (effectively killing the bill) on February 10, 2010, would have prohibited corporations from making political expenditures without shareholder approval.

Tennessee -- [HB 3587](#) and [SB 3118](#), introduced on January 27, 2010, and [HB 3626](#) and [SB 3303](#), introduced on January 28, would establish disclosure and attribution requirements for corporate-funded independent expenditures. [HB 3182](#) and [SB 3198](#) (introduced on January 27, 2010), [HB 3714](#) and [SB 3664](#) (introduced on January 28), [HB 3715](#) and [SB 3633](#) (introduced on January 28), and [SB 3797](#) (introduced on January 28) would prohibit foreign corporations from using funds to aid either in the election or defeat of any candidate for office. Companion bills [HB 3713](#) and [SB 3672](#), and [SB 3798](#), all introduced January 28, would create a Class B misdemeanor for the use of corporate funds to aid in the election or defeat of a judicial candidate.

West Virginia - [HB 4647](#), introduced on February 22, 2010, repeals the ban on corporate express advocacy and applies detailed disclosure requirements for money spent by corporations on political advertising.

Wisconsin -- the Senate passed [SB 43](#) just two days before the release of the Citizens United decision. This bill would ban corporate and union funding of electioneering bans and require greater disclosure. The bill's sponsors say they are hoping to salvage the disclosure portions of the bill. Also, the Government Accountability Board is considering rules that would require greater disclosure. [SB 540](#), introduced February 17, 2010, repeals Wisconsin's ban on corporate independent expenditures. It also requires a corporation to file documentation of a vote of shareholders taken within the past two years approving campaign expenditures before making such an expenditure.

Wyoming -- [HB 68](#), which would repeal the ban on independent expenditures by corporations, is pending in the Legislature.

State Bans on the Use of Corporate and Union Treasury Funds for Campaign Advertising

State	Summary of Ban & Cite
Alabama	Corporations cannot fund ads directly under their own name, but must pay for them thru a PAC; corporations cannot contribute to a PAC (NOTE: this opinion applied specifically to spending on ads for/against referenda; not entirely clear that it applies to ads for/against candidates too) (AG Opinion 82-088; conversation with SOS staff on 1/25/10) (§10-2A-70 and 10-2A-70.1)
Alaska	Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate (the definitions of these terms exclude corporations and unions) (§15.13.067 , 15.13.135)
Arizona	It shall be unlawful for any corporation, organized or doing business in this state, to make any contribution of money or anything of value for the purpose of influencing any election or official action. (Const. Art. 14, §18) It is unlawful for a corporation, a limited liability company, or a labor organization to make any contribution of money or anything of value for the purpose of influencing an election (§16-919) State law has a specific list of corporate expenditures that are not considered to be political contributions prohibited by law, and advertising for/against candidates is not included in this list (§16-920)
Colorado	It shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political party, and to make expenditures expressly advocating the election or defeat of a candidate; except that a corporation or labor organization may establish a political committee or small donor committee which may accept contributions or dues from employees, officeholders, shareholders, or members. (Const. Art. XXVIII, §3(4)) Notwithstanding any section to the contrary, it shall be unlawful for a corporation or labor organization to provide funding for an electioneering communication; except that any political committee or small donor committee established by such corporation or labor organization may provide funding for an electioneering communication. (Const. Art. XXVII, §6(2))

Connecticut	No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. (§9-613)
Iowa	It is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office (§68A.503)
Kentucky	No corporation organized or authorized to do business in this state or in another state shall, by itself or by or through an officer, agent, attorney, or employee, subscribe, give, procure or furnish, or afterwards reimburse or compensate in any way any person who has subscribed, given, procured, or furnished, any money, privilege, favor, or other thing of value to any political or quasi-political organization, or any officer or member thereof, to be used by such organization for the purpose of aiding, assisting, or advancing any candidate for public office in this state in any way whatever. (§121.035)
Massachusetts	No corporation carrying on the business of a bank, trust, surety indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party. (Ch. 55 §8)
Michigan	A corporation, joint stock company, domestic dependent sovereign, or labor organization shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of a contribution pursuant to section 4(3)(a). (§169.254)
Minnesota	A corporation may not make an independent expenditure or offer or agree to make an independent expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "independent expenditure" means an expenditure that is not made with the authorization or expressed or implied consent of, or in cooperation or concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate. (§221B.15(3))
Montana	A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party. (§13-35-227)
North Carolina	No prohibited source may make any disbursement for the costs of producing or airing any electioneering

	<p>communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. (§163-278.82)</p> <p>The term "prohibited source" means any corporation, insurance company, labor union, or professional association. (§163-278.80(4))</p> <p>...it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly: (1) To make any contribution to a candidate or political committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate (§163-278.19(a)(1))</p>
North Dakota	<p>A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution to aid any candidate for public office or for nomination to public office. (§16.1-08.1-03.3)</p>
Ohio	<p>No corporation, no nonprofit corporation, and no labor organization, directly or indirectly, shall pay or use, or offer, advise, consent, or agree to pay or use, the organization's money or property for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee including a political action committee of the corporation or labor organization, a legislative campaign fund, or any organization that supports or opposes any such candidate, or for any partisan political purpose.. (§3599.03)</p> <p>No person shall make, during the thirty days preceding a primary election or during the thirty days preceding a general election, any broadcast, cable, or satellite communication that refers to a clearly identified candidate using any contributions received from a corporation or labor organization. (§3517.1011(H))</p>
Oklahoma	<p>A corporation or labor organization shall not make a contribution or an expenditure or an independent expenditure to, or for the benefit of, a candidate or committee in connection with an election or for any electioneering communication. (Tit. 74, Ch. 62, §257:10-1-2(d)(2))</p>
Pennsylvania	<p>It is unlawful for any National or State bank, or any corporation, incorporated under the laws of this or any other state or any foreign country or any unincorporated association, except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever except in connection with any question to be voted on by the electors of this Commonwealth. (Section 1633 25 P.S. §3253)</p>
Rhode Island	<p>It shall be unlawful for any corporation, whether profit or non-profit, domestic corporation or foreign corporation or other business entity to make any campaign contribution or expenditure to or for any candidate, political action committee, or political party committee, or for any candidate, political action committee, or political party</p>

	committee to accept any campaign contribution or expenditure from a corporation or other business entity. (§17-25-10.1(h))
South Dakota	No organization may make a contribution to a candidate committee, political action committee, or political party or make an independent expenditure expressly advocating the election or defeat of a candidate. (§12-27-18) "Organization," any business corporation, limited liability company, nonprofit corporation, limited liability partnership, limited partnership, partnership, cooperative, trust, business trust, association, club, labor union, collective bargaining organization, local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership, trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state, any entity organized in a corporate form under federal law or the laws of this state, or any group of persons acting in concert which is not defined as a political committee or political party in this chapter (§12-27-1(16))
Tennessee	It is unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever. (§2-19-132(a))
Texas	A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter. (Elec. Code §253.094)
West Virginia	Notwithstanding any provision of section two-b of this article, no officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may pay, give, lend or authorize to be paid, given or lent any money or other thing of value belonging to the corporation for the purpose of expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, to any candidate, financial agent, political committee or other person. No person may solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation. (§3-8-8)
Wisconsin	No foreign or domestic corporation, or association may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum. (§11.38)
Wyoming	Except as otherwise provided in this section, no organization of any kind including a corporation, partnership, trade union, professional association or civic, fraternal or religious group or other profit or nonprofit entity except a political party, political action committee or candidate's campaign committee organized under W.S. 22-25-101, directly or indirectly through any officer, member, director or employee, shall contribute funds, other items of value or election assistance to aid, promote or prevent the nomination or election of any candidate or group of

_____ candidates or to aid or promote the interests, success or
defeat of any political party. (§22-25-102)

Source: National Conference of State Legislatures, January 2010

For More Information

For more information on campaign finance laws in the states, visit NCSL's [Campaign Finance page](#) or contact [Jennie Drage Bowser](#) in NCSL's Denver office at 303-364-7700.

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