January 23, 2010

24 States' Laws Open to Attack After Campaign Finance Ruling

By IAN URBINA

In Wisconsin, conservative and pro-business groups said Friday that they were considering a lawsuit to block a proposed law that would ban corporate spending during political campaigns.

In Kentucky and Colorado, lawmakers looked for provisions in their state constitutions that may need to be rewritten. And in Texas, lawyers for Tom DeLay, the former House majority leader, said the pending state campaign finance case against him should be thrown out.

A day after the United States Supreme Court ruled that the federal government may not ban political spending by corporations or unions in candidate elections, officials across the country were rushing to cope with the fallout, as laws in 24 states were directly or indirectly called into question by the ruling.

"One day the Constitution of Colorado is the highest law of the state," said Robert F. Williams, a law professor at Rutgers University. "The next day it's wastepaper."

The states that explicitly prohibit independent expenditures by unions and corporations will be most affected by the ruling. The decision, however, has consequences for all states, since they are now effectively prohibited from adopting restrictions on corporate and union spending on political campaigns.

In his dissent to the 5-to-4 ruling, Justice John Paul Stevens highlighted the burden placed on states.

"The court operates with a sledgehammer rather than a scalpel when it strikes down one of Congress's most significant efforts to regulate the role that corporations and unions play in

electoral politics," he wrote. "It compounds the offense by implicitly striking down a great many state laws as well."

For now, the decision does not overturn all the state laws in question, but it is only a matter of time, experts said, before the laws will be challenged in the courts or repealed by state legislatures. Since the state laws are vulnerable, it is unlikely that officials will continue enforcing them, experts said.

Montana is one of the states that will probably be affected. It has one of the nation's oldest campaign finance laws, approved by voters in 1912 after a copper baron, William A. Clark of Butte, bribed members of the State Legislature to get a United States Senate seat.

Chris Gallus, a former lobbyist and a lawyer who represents business interests in Montana, said his clients would most likely challenge the statute if it were not stricken.

States that can expect to see the biggest and most sudden influx of money are those — like Ohio and Florida — where it is relatively expensive to run campaigns and where races are competitive, said Ray La Raja, a political science professor at the University of Massachusetts, Amherst. He predicted corporate spending would increase in states where control of state governments hangs in the balance.

The ruling left many state lawmakers frustrated and uncertain how to proceed.

"It's absolutely outrageous and we've got to find a way to deal with it," said Michael E. Gronstal, the Senate majority leader in Iowa, where lawmakers were exploring how they might keep at least some of the restrictions on political expenditures in the current state law.

The decision could also affect pending trials, like that of Mr. DeLay, who was charged in 2005 with criminal violations of state campaign finance laws and money laundering.

"The money laundering and conspiracy to commit money laundering charges will definitely be undermined," said Dick DeGuerin, Mr. DeLay's lawyer. "The reason is that the foundation of the prosecution's argument is that corporate donations are illegal in any part of the political process, but the Supreme Court just struck that idea down."

But Carl Bryan Case, the director of the Appellate Division at the Travis County District Attorney's Office, which is handling Mr. DeLay's case, disagreed.

"The indictments against Mr. DeLay describe corporate contributions to a political campaign," he said. "What the Supreme Court addressed was independent expenditures made by third parties on their own and without having to do with campaigns."

Alan Schneider, the state prosecutor in Grand Traverse County, Mich., said he was concerned about his continuing criminal investigation of Meijer Inc.'s actions in a 2007 recall election. "We're going to have to shift our focus entirely," he said.

The court's decision effectively overturns the section of the Michigan Campaign Finance Act that prohibits corporate financing of candidate campaigns, Mr. Schneider said. Meijer is accused of illegally funneling tens of thousands of dollars to groups to try to depose the township board in Acme Township in a 2007 recall election.

"Unfortunately, we now have to drop the felony charges we were pursuing and only go after the misdemeanors," he said. "It's frustrating."

David Primo, a political science professor at the University of Rochester, counseled caution about predicting the impact of the Supreme Court decision. While it grants corporations and unions new access, it is also likely to spur state officials and campaign reform groups to push for new types of restrictions.

"This tug of war will continue as long as we have fundamental disagreements in the country over the role of money in politics," he said.

The decision may galvanize reformers to push harder for public financing of elections.

It will also bring new pressure on states to improve their disclosure rules, experts said, since those rules will be one of the only ways left to regulate how corporations and other groups make expenditures in local races.

Joseph Birkenstock, the former chief counsel for the Democratic National Committee now with the law firm Caplin & Drysdale in Washington, said states that previously banned corporate expenditures would begin adapting disclosure rules so that the public can get the same information about corporate political advertisements that is currently available for advertisements paid for by individuals or political action committees.

Richard Hasen, an election law specialist at Loyola Law School in Los Angeles, said he expected state judicial races to be especially affected by the Supreme Court decision.

In recent years, he said, the states where corporate contributions were permitted saw an explosion in spending in judicial races. With the new ruling, those states and others where such donations were limited or banned are likely to see more money spent on these races.

Between 2000 and 2009, spending on state supreme court races across 22 states that had competitive elections was about $207 million, up from $86 million between 1990 and 2000, according Justice at Stake, at watchdog group that monitors money in court races.

Dan Frosch and Kitty Bennett contributed reporting.

adn.com
Anchorage Daily News

Our view: Full disclosure

Lawmakers offer swift response to Supreme Court ruling

(02/20/10 18:21:43)

On Thursday, Jan. 21, the United States Supreme Court ruled that corporations and unions can spend freely to support or oppose a candidate for federal office right up to Election Day. On Friday, Feb. 19, lawmakers in the Alaska Legislature proposed bills that would require strict disclosure and disclaimer statements on such advertising.

Well done.

Sen. Hollis French, Rep. Les Gara and Rep. Scott Kawasaki led the way with this rapid response to the court's decision in Citizens United v. Federal Elections Commission. They're also backing a long-term response aimed at overturning the court's decision. That legislation would deny the status of personhood to corporations for the purpose of influencing elections. First, the rapid response.

STAND UP AND BE COUNTED

Identical bills in the House and Senate would require all "persons," the legal standing of corporations affirmed by the court's decision, to disclose in detail to the Alaska Public Offices Commission all contributions and expenditures on behalf of or against a candidate, a full list of the corporate officers and directors if applicable and the name of the ballot measure or candidate addressed.

In addition, any campaign advertising would have to include the "person's" principal officer and title, the address of the business and the names of the "person's" top five contributors to the campaign.

The disclaimer would have to make clear to anyone reading, hearing or viewing a campaign ad that the candidate in question does not authorize or endorse the ad.

These laws would become effective in Alaska immediately upon passage -- if they're passed this session, we'd keep any corporate and union spending right out in the light for the 2010 primary and general elections.

Disclosure must be an absolute in Alaska politics. We've had experience of bogus front groups masking large amounts of money aimed to help or hurt candidates and ballot initiatives. While the court's ruling left federal disclosure rules intact, it

left Alaska open to nondisclosure because we didn't allow corporations to directly support or oppose candidates; hence we had no disclosure rules in place when the justices opened the door to corporate giving.

The message and the law needs to be strong and clear: If you want to participate in Alaska campaign politics, stand up and be counted -- by name, by number, by affiliation and by amount. We want to know who you are, how many you are, who you're with and how much you're contributing.

That way we can figure out where your interests lie -- and where the candidate you're backing may stand.

If you want anonymity, stay out of the game. Alaska politics should be secret in one place -- the voting booth.

These disclosure and disclaimer bills, Senate Bill 284 and House Bill 358, deserve expedited committee hearings and swift passage. They'll keep Alaska politics open and the political players out front where they belong.

TAKING ON THE COURT

The same lawmakers are backing short bills (Senate Bill 285, House Bill 359) that say simply that corporations are not persons when it comes to election spending. The aim here is to restore the authority of the federal government and the states to place limits on corporate power over elections and candidates.

The reason is simple. The largest corporations have enormous resources. And the plain truth -- the "common sense" referred to by Justice John Paul Stevens in his dissent from the January ruling -- is that effective free speech in a modern election is not free.

Thus, the organizations with the most money buy the most speech. With the court's ruling, that's more likely than ever before. Corporate interests could dominate radio, television and print advertising and have the power to drown out dissenting voices. Candidates -- despite any disclaimers -- could find themselves ever more beholden to corporate interests that outspend their own campaigns and claim credit for their victories.

A healthy representative democracy limits such power.

Given the Supreme Court's decision, such a law likely would be challenged. That's the idea. The sponsors want the court to rethink the Citizens United case.

Sen. French said these bills will take more time and are part of a national chorus of opposition to the court's ruling. Alaska's voice should be clear in that chorus. The court's January ruling is the law of the land for now. That's all the more reason to get tough disclosure laws on the books.

BOTTOM LINE: The Legislature should waste no time approving tough disclosure laws -- and provide the means to enforce them.

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Outside editorials

Freedom of speech: Who's paying for it?

The following editorial appeared in the Philadelphia Inquirer:

A proposal that would make it easier to find out who is paying for political ads in federal elections is needed after the damage caused by a recent Supreme Court ruling.

The measure from Democrats would require corporations, unions, and advocacy groups, now freed from restrictions against spending on individual races, to stand up for their ads by clearly identifying who paid for them.

Groups running ads for or against a candidate would be required to report their donors to the Federal Election Commission. They'd also need to identify the top five donors in the advertising. And, in some cases, a corporate CEO would have to appear on camera to say that he or she approves "this message," just as candidates do.

These proposed rules could be, and should be, in place in time for the general election this year.

This action is a necessary response to the Supreme Court's 5-4 ruling last month that allows corporations to spend money directly on political campaigns to advocate for or against specific candidates. Election-law loopholes that existed before the ruling would enable corporations now to fund campaign ads without disclosing who paid for them.

The impact of the court's decision isn't hard to imagine. The future could look a lot more like the current mysterious TV ad urging Sens. Bob Casey, D-Pa., and Arlen Specter, D-Pa., to vote against a bill that would regulate financial institutions.

This scare tactic calls the legislation a "new $4 trillion bailout for banks," although the bill is actually an attempt to reform Wall Street and create a new agency to protect consumers of financial products.

The ad was funded by something called the "Committee for Truth in Politics," a shadowy group that refuses to disclose any details of its spending to the FEC. It was created by a Republican operative in North Carolina. But it's impossible to tell from the ad itself who is paying for it, let alone for viewers to evaluate its substance.

The Supreme Court has allowed third parties to virtually take over individual elections with unlimited spending. The unfortunate fact is that there's very little Congress can do to control the new flood of money that corporations and unions can pour into campaigns.

But lawmakers can at least require these players to disclose their activities fully. That will help audiences judge for themselves the motivations behind such advertising.

Legislation sponsored by Sen. Charles Schumer, D-N.Y., and Rep. Chris Van Hollen, D-Md., would require corporations to disclose political expenditures on their Web sites within 24 hours, and to inform shareholders quarterly.

There should be bipartisan support for their proposal. A new Washington Post-ABC News poll found that 85 percent of Democrats and 76 percent of Republicans oppose the Supreme Court's decision, and 72 percent of those polled favor new campaign-finance limits.

The court undermined decades of sensible election law, and the damage can't be easily undone. Greater transparency is the minimum required to start picking up the pieces of this harmful ruling.

The Washington Post

Poll: Large majority opposes Supreme Court's decision on campaign financing

Washington Post Staff Writer
By Dan Eggen
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Americans of both parties overwhelmingly oppose a Supreme Court ruling that allows corporations and unions to spend as much as they want on political campaigns, and most favor new limits on such spending, according to a new Washington Post-ABC News poll.

Eight in 10 poll respondents say they oppose the high court's Jan. 21 decision to allow unfettered corporate political spending, with 65 percent "strongly" opposed. Nearly as many backed congressional action to curb the ruling, with 72 percent in favor of reinstating limits.

The poll reveals relatively little difference of opinion on the issue among Democrats (85 percent opposed to the ruling), Republicans (76 percent) and independents (81 percent).

The results suggest a strong reservoir of bipartisan support on the issue for President Obama and congressional Democrats, who are in the midst of crafting legislation aimed at limiting the impact of the high court's decision.

"If there's one thing that Americans from the left, right and center can all agree on, it's that they don't want more special interests in our politics," Sen. Charles Schumer (D-N.Y.), who is spearheading the legislative effort, said in a statement after the poll was released Wednesday.

"We hope we can get strong and quick bipartisan support for our legislation, which passes constitutional muster but will still effectively limit the influence of special interests."

Under legislation being drafted by Schumer and Rep. Chris Van Hollen (D-Md.), companies with foreign ownership or federal contracting ties would be limited in their ability to spend corporate money on elections.

The lawmakers also want to require companies to inform shareholders about political spending; to mandate special