



ELECTION LAW NEWS ALERT

Developments in All Aspects of Political Law | January 21, 2010

Supreme Court Gives Corporations Their Voice Back

By Jan Witold Baran, Carol A. Laham, Thomas W. Kirby, Caleb P. Burns and D. Mark Renaud

Today, the U.S. Supreme Court held that corporations and unions have the same right to engage in independent political speech as do individuals, including the right to expressly advocate the election or defeat of candidates. The much-anticipated opinion, from *Citizens United v. Federal Election Commission*, No. 08-205 (available at <http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>), is a significant victory for unions, businesses, and trade associations.

Reversing two decisions that held political speech could be banned merely because the speaker was a corporation, the Supreme Court held:

- Laws may not prohibit a corporation from using its own corporate treasury funds to independently advocate the election or defeat of political candidates. Thus, a corporation may use its own treasury funds to pay for an ad that urges the public to “vote for” or “vote against” a particular candidate.
- Similarly, laws may not prohibit a corporation from using its own funds to make independent “electioneering communications.” (Generally speaking, “electioneering communications” are broadcast, cable, and satellite communications that refer to a candidate for federal office and are made within 30 days of a primary election or 60 days of a general election.)

While the *Citizens United* decision is a significant victory for free corporate and union speech, it is also important to note what today’s decision does not do:

- The opinion does not change what federal PACs can and cannot do under federal law.
- The ban on corporate and union contributions to candidates and parties remains. A corporation cannot make a direct contribution from its general treasury funds to a federal candidate. Nor may a corporation coordinate campaign spending with a candidate or political party committee, or their agents.
- The Court upheld the disclosure and disclaimer requirements applicable to independent public communications. Thus, corporations may still be required to identify themselves as speakers and must file reports with the Federal Election Commission.
- This opinion specifically addressed federal law. The opinion’s First Amendment principles should apply to state laws, but such laws need to be carefully analyzed on a state-by-state basis.

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Wiley Rein LLP attorneys Jan Witold Baran, Thomas W. Kirby, Caleb P. Burns, and Andrew G. Woodson submitted an amicus brief in this case on behalf of the Chamber of Commerce of the United States of America (available at <http://www.wileyrein.com/resources/documents/chamberofcommerce.pdf>) that was cited at oral argument, twice by the majority opinion, and once in the dissenting opinion. Attorneys at Wiley Rein LLP are able to provide additional guidance on the *Citizens United* decision and its implications for your organization. ■

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