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CORPORATE LAW UPDATE

Ohio Officials Concede They May Not Preclude Corporate Independent Spending on Elections

On January 21, 2010, the United States Supreme Court in *Citizens United v. Federal Elections Commission* (FEC) struck down federal law that precluded corporations from using general treasury funds to advocate the election or defeat of a federal candidate. The Court held that so long as the communications are produced independently and not coordinated with the candidate's campaign (*i.e.*, are independent expenditures) corporate expenditures were permissible.

The Ohio Elections Commission and Ohio Secretary of State Jennifer Brunner have now conceded that the state's similar statutory ban on corporate independent expenditures is unenforceable. In its Advisory Opinion 2010ELC-02 issued on September 2, the Ohio Elections Commission explained that it will interpret R.C. §§ 3517.105 and 3599.03 in light of *Citizens United* to permit a corporation "to independently participate in partisan political activities, as long as such participation is independent of and not coordinated with any candidate or political party."

On September 15, Secretary of State Brunner entered into a consent decree signed by U.S. District Judge George C. Smith that allows corporations to engage in "express advocacy" for or against a candidate, so long as it is independent of the candidate's campaign.

It is apparent that the impact of *Citizens United* is now reaching similar state laws. It is only a matter of time before other prohibitions will be tested under the analysis of *Citizens United*, such as whether the election activity prohibition on 501(c)(3) nonprofit corporations survives and whether a compelling interest sufficient to justify the prohibition of direct corporate contributions remains. At this time, however, the provisions prohibiting expenditures by 501(c)(3) entities and direct contributions to a candidate or party from corporations remain in effect.

FOR MORE INFORMATION

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