

States Respond to *Citizens United*

March 2010

On January 21, 2010, the United States Supreme Court ruled in *Citizens United v. Federal Election Commission* that corporations and unions may use general treasury funds to make independent expenditures for speech that is an electioneering communication or for speech expressly advocating the election or defeat of a candidate. While the statute at issue in *Citizens United* was a federal statute, and, thus, the ruling has no direct effect on states, the constitutional analysis is broadly written. As a result, the law in the approximately 24 states that limit corporate expenditures must change at some point. Below is a nonexhaustive survey of how various states have reacted so far to the court's ruling.

Alaska. Alaska's Attorney General issued a February 19, 2010 Memorandum stating that the *Citizens United* decision likely invalidates two Alaska statutes prohibiting independent expenditures by corporations and labor unions. The Alaska Attorney General noted that the *Citizens United* decision does not directly affect other provisions of Alaskan law, including contribution limitations and reporting requirements. (The Memorandum is available at www.law.state.ak.us/pdf/civil/021910-citizen.pdf.)

Arizona. In the Arizona State Senate, the state Senate president and the minority leader have co-sponsored a bill mandating registration and reporting requirements for corporations, LLCs and labor unions making independent expenditures. The bill also requires literature and advertisements used in independent expenditures to disclose the name of the corporation, LLC or labor organization making the expenditure.

Colorado. Colorado Governor Bill Ritter asked the Colorado Supreme Court to review the continuing validity of provisions of the Colorado Constitution involving independent expenditures and electioneering funding. The Colorado Supreme Court has accepted this request.

Iowa. The Iowa Senate passed a comprehensive bill in response to the *Citizens United* decision. Among other provisions, the bill would require a corporation to file a statement when it spends more than \$750 on independent expenditures, mandate approval of the board of directors (or other similar organizational body) before a corporation may make an independent expenditure, require an attribution statement of at least four seconds in television, video and motion picture advertising, and prohibit foreign nationals from making independent expenditures.

Maryland. Members of the Maryland General Assembly introduced numerous bills after the *Citizens United* decision. These bills address a variety of topics and include provisions requiring board of director and stockholder approval of corporations' independent expenditures, prohibiting government contractors from making independent expenditures and requiring an attribution statement in corporations' independent expenditure advertisements.

Michigan. The Michigan Department of State declared that the *Citizens United* decision makes Michigan's law prohibiting independent expenditures by corporations, labor unions and domestic dependent organizations (Indian tribes) unconstitutional. The Department of State also declared that corporations, unions and domestic dependent sovereigns must register a political committee after spending \$500 or more in independent expenditures. Once a political committee is registered, it must file detailed statements indicating transfers of treasury funds to the committee and describing the independent expenditures made with those funds. Reporting is also required of a corporation, union or domestic dependent sovereign that spends between \$100.00 and \$499.99. (The Statement is available at www.michigan.gov/sos/0,1607,7-127-1633_8723_15274-230880-,00.html.)

Minnesota. In February 2010, the Minnesota Chamber of Commerce filed a federal lawsuit against the state in an attempt to bring the state's laws in line with the *Citizens United* decision.

Texas. The Texas Ethics Commission declared that corporations are permitted to make the equivalent of independent expenditures. The Commission also declared that Texas limitations on political contributions are still valid. (The Statement is available at www.ethics.state.tx.us/whatsnew/US_Supreme_Court_Ruling.html.)

Wyoming. On February 10, 2010, the Wyoming House failed to garner a necessary two-thirds majority to pass a bill to reconcile state campaign finance laws with the *Citizens United* decision.