

State Campaign Finance Law Changes – Just in Time for the 2012 Election

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With most of the political media focused on the ongoing presidential primary campaign, the state-level elections on the ballot this year are often over-looked. Many of these elections are governed by rules containing significant differences from federal law, and a number of these laws have changes, in part due to judicial action. These changes will affect candidates as well as corporations, trade associations and other persons seeking to impact state campaigns, and two of the most important recent developments are discussed below.

Colorado. In late February, the Colorado Supreme Court issued a decision concerning whether certain political activity would trigger political committee registration. At issue were two different 527 organizations registered as “political organizations” under Colorado law but not registered as Colorado “political committees.” (In Colorado, political committees have contribution limits on the amount of contributions they may receive, whereas political organizations do not.) The two organizations distributed print and television advertisements that did not use explicit words of express advocacy such as “vote for,” “elect,” “support,” etc.—often referred to as the “*Buckley* standard”—but that identified candidates, summarized the candidates’ positions and invited voters to contact and thank the candidates.

A Colorado nonprofit organization that specializes in litigation against the government claimed that these advertisements were “express advocacy” and, since an expenditure for “express advocacy” may trigger political committee registration, the 527 organizations should have registered as political committees. In its decision limiting “express advocacy” to the *Buckley* standard and other synonymous words or phrases, the court rejected the Colorado nonprofit’s arguments that either the term “express advocacy” was intended by voters to be broadly defined to include communications other than those using explicit words of advocacy or that the U.S. Supreme Court’s recent campaign finance jurisprudence requires the regulation of political speech beyond *Buckley*’s “magic words” to include the “functional equivalent of express advocacy.” Regarding the Colorado nonprofit’s second argument, the court explained that the U.S. Supreme Court only permitted the regulation of political speech in situations other than the *Buckley* standard when “objective and bright-line criteria” were utilized, such as electioneering communications provisions. In contrast, the court held that the expansion to “the functional equivalent of express advocacy,” as the Colorado nonprofit attempted to use such terminology, raises vagueness and overbreadth concerns.

Missouri. In 2010, Missouri enacted legislation amending its campaign finance, ethics, lobbying and procurement laws. Notably, as it relates to campaign finance, the new law requires state officeholders, state legislators and candidates for such offices to report contributions exceeding \$500 within 48 hours of receiving the contribution. Also, the bill limits political action committees to receiving contributions only from individuals, corporations, unions and federal political action committees while other political action committees, candidate committees and political party committees are prohibited from contributing to a political action committee. (Additional information about this law is available from the September 2010 "New Missouri Law Impacts Ethics, Lobbying and Campaign Finance" article in Wiley Rein's *Election Law News*.)

This law was challenged for violating Missouri's state constitutional requirements that a bill only address a single subject matter and that a bill not be changed through amendments so as to be different from its original purpose. In a February 14, 2012, decision, the Missouri Supreme Court affirmed a lower court's ruling that found all of the bill's provisions, except those relating to procurement, to be unconstitutional as violations of Missouri's constitutional single-purpose and original-purpose requirements.