

The Rise of State Super PACs

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Super PACs have become major political players at the federal level, but these independent expenditure entities are also rising in importance at the state level. Super PACs, which are also referred to as independent expenditure Political Action Committees (PACs), may accept unlimited individual and corporate contributions for the sole purpose of making independent expenditures supporting or opposing candidates. Super PACs may not make direct contributions to candidates or other committees. (For additional information about Super PACs, please see the *Election Law News* article "What Is a Super PAC?".) Below are several examples of recent state advisory opinions, legislation and litigation specifically directed at state level Super PACs.

Alaska. The Alaska Public Offices Commission (APOC), the state agency responsible for enforcing Alaska's campaign finance law, recently issued an advisory opinion permitting "Alaska Deserves Better," an independent expenditure group, to raise and spend unlimited contributions for the purpose of making independent expenditures. Ordinarily, Alaska limits contributions to groups to \$500 or \$1,000. The executive director of APOC, however, has publicly cautioned that the advisory opinion only applies to Alaska Deserves Better and is fact-specific. The executive director has also urged similar independent expenditure groups to seek an advisory opinion before proceeding in independent expenditure activities.

District of Columbia. In response to a request from Wiley Rein LLP attorneys Jan Witold Baran and D. Mark Renaud, the D.C. Office of Campaign Finance (OCF) issued an interpretive opinion (12-01) recognizing a Super PAC exception to the District of Columbia's campaign finance laws. Relying on the D.C. Circuit's precedent in *SpeechNow.org v. FEC*, 599 F.3d 686 (2010), OCF held that the

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ordinary \$5,000 limit on contributions to political actions committees cannot be enforced against committees that are “established solely to engage in fundraising as independent expenditure committees.”

Illinois. Earlier this year, in *Personal PAC v. McGuffage*, the U.S. District Court for the Northern District of Illinois permanently enjoined the Illinois State Board of Elections from enforcing two key provisions of Illinois campaign finance law: (1) the contribution limits as applied to PACs that only make independent expenditures; and (2) the prohibition against an individual or entity maintaining or establishing more than one PAC as applied to PACs that only make independent expenditures. The Illinois State Board of Elections has incorporated independent expenditure-only PACs into its campaign finance disclosure guidance and reporting forms.

Montana. Recent litigation has paved the way for Super PACs at the state level in Montana. In the first case, *American Tradition Partnership v. Bullock*, the U.S. Supreme Court held that Montana's statutory prohibition against corporate independent expenditures was unconstitutional in light of *Citizens United*. In the second case, *Lair v. Bullock*, the U.S. District Court for the District of Montana permanently enjoined the enforcement of Montana's prohibition on corporate contributions to political committees that use corporate contributions to make independent expenditures. Although the Montana Commissioner of Political Practices has not issued formal guidance on the creation of Super PACs at the state level, the Commissioner has revised the political committee reporting forms to account for the disclosure of corporate contributions to PACs making independent expenditures.

Rhode Island. Governor Chafee recently signed The Transparency in Political Spending Act, which imposes additional disclosure requirements on all “persons” making independent expenditures or electioneering communications. Persons making independent expenditures or electioneering communications must now report their donors to the Rhode Island State Board of Elections, as well as include certain disclaimers on media and Internet advertising.

Vermont. A self-proclaimed independent expenditure PAC filed a lawsuit challenging Vermont's contribution limits with respect to PACs that only make independent expenditures. Last month in *Vermont Right to Life Committee v. Sorrell (II)*, the U.S. District Court for the District of Vermont ruled that Vermont's contribution limits did apply to independent expenditure PACs. In this case, the judge explained that the independent expenditure PAC did not have accounting procedures in place to clearly separate the funds between the independent expenditure PAC and its related traditional PAC. Accordingly, the judge concluded that permitting the independent expenditure PAC to accept unlimited contributions would circumvent the contribution limits with respect to the traditional PAC.