

Three Years Later, States Still Grappling with Aftermath of *Citizens United*

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New Jersey's state campaign finance agency recently issued an advisory opinion confirming that political committees making only independent expenditures must abide by the state's contribution limits and may not accept unlimited funds. Florida's state campaign finance agency also recently issued a similar advisory opinion, although this interpretation was quickly superseded by the legislature. The special type of committee at issue in these advisory opinions, called Super PACs, have become increasingly popular at the federal level and in other states. (For additional information about Super PACs, please see the *Election Law News* article "What Is a Super PAC?")

In explaining its decision, the New Jersey Election Law Enforcement Commission stated that it has the statutory authority only to implement, interpret and enforce the state's campaign finance laws; it does not have the authority to declare the contribution limits unenforceable or unconstitutional with respect to political committees that make only independent expenditures. The Commission also noted that neither the Third Circuit Court of Appeals nor the Supreme Court has specifically addressed Super PACs. Instead, these decisions have been rendered by courts in other federal circuits and other states. The Commission recognized the authority of *Citizens United* and the constitutional principles behind *SpeechNow.org* (the D.C. Circuit Court of Appeals decision that paved the way for Super PACs at the federal level), but the agency indicated that it must continue to apply the law on the books in the state until the legislature amends the statute. In response to the Commission's decision, which is available online at <http://www.elec.state.nj.us/pdf/ao/ao012013.pdf>, the Super PAC that requested the opinion filed suit against the agency in federal district court.

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The Florida Department of State provided a similar explanation in its opinion, which is available online at <http://election.dos.state.fl.us/opinions/new/2013/de1305.pdf>. The Department noted that it lacked the legal authority to create an exception to the statutory contribution limits or to declare a statute unconstitutional. As part of a comprehensive campaign finance bill signed into law this month, however, the legislature responded by eliminating the limits on contributions to Super PACs. This change will take effect on November 1, 2013.