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NEWSLETTER

Two New Appellate Rulings Authorize Super PACs at the State Level

November 2013

Within the past several weeks, two federal appeals courts have ruled that states cannot limit contributions to groups that only make independent expenditures. The Fifth Circuit—covering Louisiana, Mississippi, and Texas—issued its decision on October 16; the Second Circuit—consisting of Connecticut, New York, and Vermont—decided the question on October 24. While the decisions addressed only Texas and New York law, respectively, the courts' reasoning will have an impact on all the states within the two circuits.

Both decisions relied on the Supreme Court's *Citizens United* opinion, which held that the only government interest that can justify limiting political spending is preventing *quid pro quo* corruption or the appearance of such corruption. Since independent expenditures are not coordinated with candidates, the Supreme Court reasoned, they cannot constitutionally be limited. In the months after *Citizens United*, the D.C. Circuit and the Ninth Circuit both took the Supreme Court's reasoning one step further: Because independent expenditures do not give rise to any state interest in combatting actual or apparent corruption, there also is no state interest in restricting contributions to groups that make only independent expenditures. The Seventh Circuit reached this same conclusion in 2011.

In decisions joined by both Republican and Democratic appointees, the Fifth and Second Circuits have now endorsed similar reasoning. The Fifth Circuit affirmed a preliminary injunction against a Texas law that banned people and entities from accepting corporate contributions but that made no exception for contributions to independent expenditure groups. Noting that "[w]e tread a well-worn path," the Fifth Circuit stressed that "[t]here is no difference in principle—at least where the only asserted state interest is in preventing apparent or actual corruption—between banning an [independent expenditure] organization . . . from engaging in advocacy and banning it from seeking funds to engage in that advocacy . . . ."

The following week, the Second Circuit agreed, preliminarily enjoining enforcement of a New York law that imposed a $150,000 aggregate cap on certain political contributions, including ones to independent expenditure groups. "Few contested legal questions are answered so consistently by so many courts and judges," the Second Circuit remarked, holding that a donor to an independent expenditure group "may not be limited in his ability to contribute to such committees."