

January 21, 2010

Memorandum

To: Interested Parties

From: Holtzman Vogel PLLC

Re: Supreme Court Decision in *Citizens United v. Federal Election Commission*

This morning, the U.S. Supreme Court issued a landmark decision on campaign finance law that substantially alters the political and legal landscape.

In *Citizens United v. Federal Election Commission* (opinion available [here](#)) the Supreme Court held that the First Amendment guarantees all corporations the right to spend unlimited amounts on independently-produced communications that either expressly advocate the election or defeat of clearly identified candidates, or simply mention candidates in the course of discussing political issues or policy. This constitutional guarantee applies to both for-profit and not-for-profit corporations, such as incorporated Section 527 and 501(c) organizations.

In reaching this decision, the Court overturned a 1990 precedent, *Austin v. Michigan Chamber of Commerce*, that upheld the government's ability to prohibit corporation-funded independent expenditures, and invalidated the "electioneering communications" provisions of the 2002 Bipartisan Campaign Reform Act of 2002 (also known as McCain-Feingold or BCRA). The Court, however, upheld certain disclaimer and disclosure requirements that BCRA imposes on electioneering communications funders.

The Supreme Court's new ruling does not allow corporations to make direct contributions to candidates, political parties, or PACs, and corporations are still prohibited from coordinating their political spending with federal candidates and political parties. Additionally, the ruling has no effect on IRS regulations pertaining to obtaining and maintaining non-profit status.

While the Supreme Court did not directly invalidate any state or local laws prohibiting or restricting corporate independent expenditures or electioneering communications, it is clear from its opinion that those laws are unconstitutional. In the coming weeks and months, we expect state and local jurisdictions to take actions to suspend enforcement of their now-invalid laws. At the federal level, we anticipate that the Federal Election Commission (FEC) to begin the task of revising its regulations.

Today's Supreme Court decision frees corporations to engage in the political process in ways that most of us have never seen in our lifetimes. While the central holdings of *Citizens United* are very clear, many questions still remain and we can expect some guidance from the FEC and possibly other regulators in the near future. We encourage you to contact us before you seek to avail yourself of your newly-recognized constitutional rights to ensure that you continue to comply with the various laws that are left untouched by today's momentous decision.

This memorandum is intended for informational purposes only and should not be construed as providing legal advice or opinions. You are advised to consult with counsel if you have any specific legal questions.