

# Supreme Court's decision on Citizens United: How will it affect Jersey?



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**BY JEFF BRINDLE**

## **COMMENTARY**

Last week, the U.S. Supreme Court in *Citizens United v. The Federal Election Commission (FEC)* issued a broad ruling on campaign finance law. Some wonder just how will it impact New Jersey's campaign finance laws?

Before answering, a few points of clarification.

First, the State's campaigns are subject to the Campaign Contributions and Expenditures Reporting Act (Campaign Act). It regulates financial activity involving elections for local and state offices, not for federal office.

Second, the court's decision centered on federal law. It addressed specifically the ban on corporate and union independent spending and the blackout period under the Bi-partisan Campaign Reform Act (BCRA), or McCain/Feingold. It impacts Congressional, Senate, and Presidential races.

Third, statutes banning donations from regulated industries, i.e., banks, insurance companies, utilities, and casinos are contained in separate law from the Campaign Act. Jurisdiction over regulated industries lies with the Attorney General.

The U.S. Supreme Court, in *Citizens United v. FEC*, involved restrictions on the airing of a documentary about Hillary Clinton when she was attempting to become the Democratic nominee for President.

Under Section 203, Electioneering Communications provision of the BCRA, or McCain/Feingold, independent political advertising was suspended during the periods 30 days before the primary and 60 days before the general.

The FEC imposed these restrictions on the group's documentary. Subsequently, *Citizens United* challenged Section 203 as

well as disclosure requirements involving independent expenditures.

The court at first focused on the issue brought by Citizens United but then expanded the scope of the case to address the issue of a ban in federal law on corporate and union spending generally.

The court addressed several issues. However, its decision in four of them stands out:

**First**, the ban on corporate and union spending sustained in the 1990 decision *Austin v. Michigan Chamber of Commerce* was found unconstitutional.

**Second**, the blackout period in *McCain/Feingold* was deemed an abridgement of free speech by the court. Advertisements containing express advocacy that urge votes for or against candidates are now allowed at all times.

**Third**, the justices came out strongly in favor of disclosure, upholding requirements that sources of spending, and even contributions, be identified.

In a word, the court made the need for strong disclosure laws more important than ever.

**Fourth**, the federal ban on direct contributions by corporations and unions was not touched by the decision. The court left those bans in place.

So what to expect in New Jersey?

The decision is almost certain to drive up spending in the congressional elections this fall. The freedom granted corporations and unions to spend independently in federal elections will be manifested in the 13 congressional races.

There are no legislative or gubernatorial races this year. But there are local races. They should be unaffected by the ruling.

Of course, any law can be challenged. But in New Jersey, state campaign finance law is consistent with the federal ruling.

New Jersey law emphasizes disclosure; it contains no outright ban on corporate or union giving.

If anything, the court's decision is an argument in favor of the judicious way our elected officials have fashioned the Garden State's statutes.

With a strong disclosure law, reasonable contribution limits and a nationally respected Gubernatorial Public Financing Program, our statutes are well positioned to withstand the strong winds from Washington.

There are legitimate concerns that the ruling threatens state pay-to-play laws and laws banning activity by regulated industries and casinos.

Regarding pay-to-play, New Jersey does not ban contributions from contractors. It restricts contributions to \$300. And, the law has been upheld by one New Jersey Appellate Court.

While regulated industries cannot make direct donations, their employees can create PACs under existing state law. Casinos and their employees do face a total ban. But again, it should be remembered that both groups are under the jurisdiction of the Attorney General and are subject to regulation and licensing by the State. They are not just restricted under campaign finance law.

Therefore, on balance, New Jersey's campaign finance laws should remain intact and remain the source of trust for the state's citizens.

**Jeff Brindle** is the Executive Director of the New Jersey Election Law Enforcement Commission.

*The opinions presented here are his own and not necessarily those of the Commission.*