



Major Campaign Finance Development *Citizens United v. FEC Supreme Court Ruling*

January 22, 2010

The Supreme Court yesterday handed down a landmark ruling in the Citizens United v. FEC case which could significantly transform the campaign finance system at the federal level.

In Citizens United, the Supreme Court in a 5-4 ruling struck down the decades-old prohibition on corporate expenditures in connection with federal elections as unconstitutional under the First Amendment. The Court also invalidated the McCain-Feingold law's restrictions on corporate and union advertising depicting federal candidates in the last 60 days before a general election and the last 30 days before a primary that is targeted to the relevant electorate. Justice Kennedy authored the controlling opinion for the Court and was joined by Chief Justice Roberts and Justices Alito, Scalia, and Thomas. Justice Stevens authored the lead dissenting opinion in the case, and was joined by Justices Breyer, Ginsburg, and Sotomayor.

In the aftermath of the Citizens United ruling, corporations, incorporated trade associations, and labor unions will have a much greater ability to use their general treasury funds (ie., non-PAC funds) to finance advertisements promoting and attacking federal candidates and officeholders -- including advertisements expressly advocating the election or defeat of federal candidates. There are no longer any content restrictions on corporate, trade association, and union federal election-related advertising, nor are there any time restrictions on when the advertisements may be disseminated -- including in the final days and weeks before a federal election.

However, several important legal restrictions do remain in place following Citizens United, including the requirement that corporate, trade association, and union advertising be done independently of federal candidates and political parties. In addition, the law's disclaimer and disclosure requirements were not struck down by the Court in Citizens United and remain in effect.

In addition to altering the campaign finance landscape for federal elections, the Citizens United ruling will also have a ripple effect at the state level in those jurisdictions that prohibit corporate and labor union independent expenditures in connection with state elections.

Please contact Michael Toner and the Election Law Group if you have any questions concerning the ruling.

Analysis by **Michael E. Toner**
Partner, Bryan Cave LLP

Election Law and Government Ethics Practice

The Bryan Cave Election Law and Government Ethics Group provides a wide range of legal advice and services, with particular emphasis on helping clients comply with the federal election laws, Federal Election Commission rules and regulations, state and local election laws, House and Senate ethics rules, the Lobbying Disclosure Act of 1995, and the Honest Leadership and Open Government Act of 2007.

The Bryan Cave Election Law Group provides advice and counseling to candidates, campaigns, political parties, corporations, corporate executives, trade associations, political groups, and individuals. We advise clients on how to comply with the Federal Election Campaign Act of 1971, as amended, as well as with FEC regulations and reporting requirements. We are also available to represent clients who are subject to FEC enforcement actions, audits, and litigation.

Our practice particularly focuses on representing corporations and corporate political action committees on all aspects of the federal election laws, including complying with the FEC's complex PAC administration and reporting rules. In addition, we advise clients on how to comply with the Lobbying Disclosure Act of 1995 (LDA) and the major changes to the LDA that became effective in 2008. We assist corporations and trade associations in accurately tracking and reporting their lobbying activities under the LDA.

Our work also includes state and local election law compliance, as well as providing advice to tax-exempt organizations that are subject to regulation by the Internal Revenue Service, the FEC, and state and local regulatory authorities. We also provide advice on complying with rules promulgated by the House and Senate Ethics Committees.

The Bryan Cave Election Law Group is headed by Michael Toner, who is also the President of Bryan Cave Strategies. Mr. Toner is the former Chairman of the Federal Election Commission and was a Commissioner on the FEC from 2002 – 2007. Mr. Toner served at the FEC while the agency implemented the Bipartisan Campaign Reform Act of 2002 (BCRA), which made the most sweeping changes to the federal election laws in a generation. Mr. Toner previously served as Chief Counsel of the Republican National Committee, General Counsel of the Bush-Cheney 2000 Presidential Campaign, and General Counsel of the Bush-Cheney Transition Team.

Our group includes John Barrie, a partner in Bryan Cave's Washington, DC, and New York offices, who provides tax advice and assistance with respect to tax exempt organization and political expenditure issues. The group also includes Senior Reporting Specialist Karen Trainer and Reporting Specialist Julie Fleming, both of whom have extensive experience working at the FEC's Reports Analysis Division, and Bryce Christy, who worked previously at the Republican National Senatorial Committee and who serves as Toner's Special Assistant. There are additional professionals at Bryan Cave who also contribute valuable assistance to the group.

The Bryan Cave Election Law Group served as outside counsel to the McCain-Palin presidential campaign in 2008 and as General Counsel to Senator Fred Thompson's presidential campaign during 2007-2008.

The Bryan Cave Election Law and Government Ethics Group is available for consultation at your convenience.

For more information on the Election Law and Government Ethics Group visit:

<http://bryancave.com/services/ServiceDetail.aspx?service=671>



Michael E. Toner

Partner

1155 F Street, N.W.
Washington, DC 20004

Phone: (202) 508-6175
Fax: (202) 220-7475
email: michael.toner@bryancave.com

As head of Bryan Cave's Election Law and Government Ethics practice, Michael Toner is a widely respected election law expert and author on campaign finance matters.

He joined the firm in 2007 after serving as chairman of the Federal Election Commission in 2006. Toner served as an FEC Commissioner from 2002-2007.

A seasoned political veteran, Toner served as Chief Counsel of the Republican National Committee (RNC) in 2001-2002, as well as General Counsel of the Bush-Cheney transition team in Washington, D.C. and the Bush-Cheney 2000 presidential campaign in Austin, Texas. Prior to his tenure on the Bush-Cheney campaign, Toner was Deputy Counsel at the RNC from 1997-1999. He also was counsel to the Dole-Kemp presidential campaign in 1996.

Toner has written widely on campaign finance matters. Toner is a contributing author of three critically acclaimed books, including *The Year of Obama*, *The Sixth Year Itch*, and *Divided States of America: The Slash and Burn Politics of the 2004 Presidential Election*. Toner's articles have also been published in *The Washington Post*, *The New York Times*, *The Boston Globe*, *The Chicago Tribune*, *The Washington Times*, *The Hill*, and *Roll Call*.

Toner has appeared as a guest commentator on Fox News Channel, ABC News, CBS Evening news, Bloomberg News, Fox Business Network, C-SPAN and National Public Radio.

Education

J.D., *cum laude*, Cornell University, 1992
M.A., Johns Hopkins University, 1989
B.A., with distinction, University of Virginia, 1986

Bar Admissions

District of Columbia
Virginia
United States Supreme Court
United States Court of Appeals for the Fourth Circuit
United States District Courts for the District of Columbia and the Eastern District of Virginia

Professional Affiliations

Adjunct Law Professor, William and Mary Law School
Lecturer, University of Virginia
Trustee, American Council of Young Political Leaders