

State &  
Federal  
COMMUNICATIONS

# COMPLIANCE NOW

E-News from State and Federal Communications, Inc.

March 2010

## A Less Passionate Look at the Citizens United Decision

By now, some of the television “talking heads” have calmed down about the Supreme Court ruling on *Citizens United v. Federal Election Commission*, and people are thankfully taking a less passionate look at the decision.

At first, as you might remember, some called the decision the end of the American political process as we know it. However, those of us in government affairs – who are used to changing rules, regulations, and restrictions – gave the ruling more careful study. We know it involves many nuanced subtexts that don’t easily lend themselves to 30-second TV talking points.

My key thought all along remains the same – while the ruling does have considerable impact on “independent expenditures” corporations, labor unions, and some others can make in a federal election, provisions preventing direct corporate contributions and ensuring transparency remain in place.

This is what I told a reporter for the *Akron Beacon Journal* when he asked for my comments on the ruling just hours after the Supreme Court made the announcement. The *Beacon Journal* reporter used the ruling to revisit some abuses

made decades earlier in the corporate contribution arena. If interested, you can read the story here:

<http://www.stateandfed.com/abi.htm>

More significant, I believe, is the effect the ruling is having on the various states. Many states are now revisiting their own laws, and more changes could come in those jurisdictions. This would, indeed, have considerable impact.

For more about how the states have reacted thus far to the ruling, please see the accompanying article in this issue, “*States React to Decision in Citizens United v. Federal Election Commission*,” written by John Cozine, Esq., research manager.

Going forward, we will closely monitor and report to you all the developments as laws change and new rules and regulations are enacted on various government levels.

Until next month, information is the key to understanding these changes ... and in staying compliant.

**Elizabeth Z. Bartz**  
President and CEO

## ‘Compliance Team’ Meets Client Needs at State and Federal Communications

The “Compliance Team” at State and Federal Communications works with ALERTS™ and C<sup>3</sup> clients to make sure they can always say: “I Comply.”

“I am proud of our team, which works exclusively with our ALERTS clients and those clients involved in Corporate Contribution Compliance – what we call C<sup>3</sup>. Our team members are national experts in compliance law in regard to lobbying, political contributions, procurement, and pay-to-play,” said Elizabeth Bartz, company president and CEO.

The team works exclusively to research and administer compliance information and services to clients. “This is what sets us apart in the industry – our people are dedicated to providing this information and service to clients,” she noted.

Amber Fish Linke, Esq., is the Compliance Manager and head of the team, which also includes: Nola Werren, Esq. Client Specialist; Brian Cassidy, Esq., Compliance Associate; Myra Cottrill, Esq., Compliance Associate; Jim Warner, Esq., Compliance Associate; Rebecca South, Federal Compliance Associate; Nicole Chames, Compliance Assistant; Sarah Gray, Compliance Assistant; Susan Stofka, Compliance Assistant; and Justin Quinlan, Compliance File Clerk.

Many members of the team speak at national conferences or lead seminars regarding compliance rules and regulations on every level of government.

“From the feedback I receive from clients, I know we have the top compliance team in the country. Our clients rely on us to be their trusted adviser on government compliance, and we are proud to be their partner,” Bartz said.



**Left to R:** [standing] Susan Stofka, Compliance Assistant; Sarah Gray, Compliance Assistant; [seated] Nicole Chames, Compliance Assistant; and Justin Quinlan, Compliance File Clerk

## Legislation We Are Tracking

At any given time, more than 1,000 legislative bills, which can affect how you do business as a government affairs professional, are being discussed in federal, state, and local jurisdictions. These bills are summarized in the State and Federal Communications' digital encyclopedias for lobbying laws, political contributions, and procurement lobbying; this information is located on the client portion of the State and Federal Communications website.

Summaries of major bills are also included in monthly e-mail updates sent to all clients. The attached chart shows the number of bills we are tracking in regards to lobbying laws, political contributions, and procurement lobbying.

	Total Bills	Number of Jurisdictions	Passed	Died	Carried over to 2010
Lobbying Laws	208	35	1	0	0
Political Contributions	408	43	0	0	0
Procurement Lobbying	287	34	0	1	0

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## States React to Decision in Citizens United v. Federal Election Commission

by John Cozine, Esq., Research Manager

**YOU SHOULD KNOW**

On January 21, 2010, the United States Supreme Court released its long-awaited decision in *Citizens United v. Federal Election Commission*. The case stemmed from an independent expenditure made by Citizens United on a film entitled *Hillary: The Movie*.

The Court held the ban on independent expenditures by corporations was unconstitutional, overruling an older decision known as *Austin v. Michigan Chamber of Commerce*. However, the Court held the disclaimer and disclosure requirements of the Bipartisan Campaign Reform Act constitutional.

The practical result of the decision is to allow corporations to make independent expenditures and electioneering communications regarding federal candidates without restrictions. President Obama's response was swift. The President decried the ruling and asked Congress for a "forceful" response to the decision. The Federal Election Commission, meanwhile, stated it was studying the decision and would issue guidance as soon as possible.

But the decision did more than affect federal elections – the decision also called into question similar state restrictions on independent expenditures and electioneering communications.

The Texas Ethics Commission responded to the decision rapidly, stating its position that corporations would be allowed to make independent expenditures in Texas. However, the commission also reiterated that direct political contributions are still prohibited under Texas law, and the Court's decision did not change that prohibition.

In Oklahoma, the state's ethics commission quickly proposed a new rule, which would bring the state's campaign finance laws into compliance with the Court's decision. The commission wanted to take action quickly in order to beat the February 2, 2010, dead-

line to submit rule changes to the legislature.

Other states have reacted by proposing or introducing legislation to bring their laws into compliance. The South Dakota Secretary of State is drafting legislation to deal with the aftermath of the decision. The secretary stated the legislation is being drafted carefully so it will only go as far as the Court went with its decision.

Craig Dilger, chairman of the Kentucky Registry of Election Finance, stated the ruling directly conflicts with the state's constitution and that new legislation would be required to comply with *Citizens United* as well as to create disclosure requirements for political activity that was previously banned.

In Colorado, the state Republican Party has stated its plan to file suit to overturn state provisions in direct conflict with the opinion and possibly to challenge limits on contributions by individuals and political action committees.

Dennis Unsworth, Montana's Commissioner of Political Practices, has stated the state's ban on corporate contributions to candidates was now ripe for a legal challenge based on the holding by the Court.

Although the Court was clear in its ruling, there are enough unresolved peripheral issues to urge caution in your approach to making such independent expenditures. States will continue to react to the decision, both proactively or in response to lawsuits. Additionally, they will likely propose new laws requiring disclosure for any corporate independent expenditures or electioneering communications.

State and Federal Communications will continue to monitor this issue in all of the jurisdictions we cover.



The Mission of State and Federal Communications is to make sure that your organization can say, "I Comply." We are the leading authority and exclusive information source on legislation and regulations surrounding campaign finance and political contributions; state, federal, and municipal lobbying; and procurement lobbying.

Contact us to learn how conveniently our services will allow you to say "I Comply" for your compliance activities.  
<http://www.stateandfed.com/>

# Summary of Changes UPDATE

## Note Recent Changes to Compliance Regulations

by John Cozine, Esq.  
Research Manager

Government affairs professionals need to be aware of recent changes – and upcoming changes – in compliance laws for several jurisdictions, including:

**FEDERAL:** On January 14, 2010, the Federal Election Commission (FEC) approved Advisory Opinion 2009-29 (Contra Costa County Retirees). In the advisory opinion, the FEC concluded neither the Federal Election Campaign Act of 1971, as amended (the Act), nor FEC regulations required the Retiree Support Group of Contra Costa County, Calif., to submit a proposal to establish a separate segregated fund (SSF) to the organization's members for a vote before it could establish the SSF. Under the Act and FEC regulations, an incorporated membership organization may pursue the internal policy of its choice to establish an SSF. The advisory opinion noted FEC regulations require each SSF to file a Statement of Organization with the FEC no later than 10 days after the occurrence of certain establishment events if the SSF is to be used wholly or partly for federal elections.

**IOWA:** The Iowa Ethics and Campaign Disclosure Board is phasing in electronic-only

reporting and registration. Beginning on May 1, 2010, all statements and reports filed by state PACs must be filed electronically. Effective January 25, 2010, all executive branch lobbyist registrations and reports also had to be filed electronically. However, the final executive lobbyist report covering 2009, due on January 31st, could still be filed through paper submission.

**MICHIGAN:** After scandals surrounding disgraced former Detroit Mayor Kwame Kilpatrick, and allegations involving other elected officials in cities such as Southfield and Ecorse, a growing number of metropolitan Detroit communities are planning overhauls to their ethics codes. The Michigan Municipal League has teamed with the state Association of Municipal Attorneys to create an online ethics manual offering suggestions for dealing with conflicts of interest, disclosure, nepotism, and political and personnel concerns. This past fall, Michigan Attorney General Mike Cox made a similar move creating a web site that addresses local government ethics. Warren Mayor Jim Fouts said he hopes his city will be the first in the state to adopt Cox's model ethics laws. But some Warren officials question the scope and effectiveness of Cox's code.

**NEW JERSEY:** New Jersey Governor Chris Christie signed Executive Order Seven. The order modifies prior executive orders implementing "pay-to-play" restrictions to include, within the definition of the term "business entity," any labor union or labor organization entering into contracts with the state of New Jersey. The order covers all political committees formed by any labor union or labor organization.

**UTAH:** Governor Gary Herbert issued Executive Order 003/2010 establishing an ethics policy for state executive branch agencies and employees. The order prohibits state executive branch employees from accepting gifts or other compensation that, either directly or indirectly, might be intended to influence or reward the individual in the performance of official business. The order also prohibits nepotism in hiring and contracting. Finally, the order requires former state employees to wait two years following the termination of employment before they can lobby their former colleagues in state government.



## See Us in Person

Plan to say hello at future events where State and Federal Communications will be attending and/or speaking regarding compliance issues.

March 3, 2010	The State of Ohio's Birthday Celebration in Washington, D.C.
March 23, 2010	Columbia Books' - Lobbying Outside Washington: Mastering the Differences in State and Federal Compliance Audioconference
March 23-April 1, 2010	Greater Akron Chamber Business Leader's Mission, Tuscany, Italy
March 24-26, 2010	SGR Workshop and SGAC Annual Meeting, Denver, Colorado
April 8-10, 2010	NCSL Spring Forum, Washington, DC
April 18-20, 2010	2010 National Association of State Procurement Officials (NASPO) How To Market To State Governments Meeting & Green Expo, San Francisco, California
April 19, 2010	American League of Lobbyists' Lobbying Certificate Program Session on State Lobbying and the Regulatory Process, Washington, D.C.
April 28-30, 2010	American Conference Institute's National Advanced Forum on Corporate Lobbying and Political Activities, Washington, D.C.
May 3-6, 2010	BIO Annual Convention, Chicago, Illinois
May 17-19, 2010	U.S. Chamber of Commerce Small Business Summit, Washington, D.C.
May 20-23, 2010	The Council of State Governments' 2010 Economic Summit of the States, New York City, New York

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## ASK THE EXPERTS

### State and Federal Communications' Experts Answer Your Questions

Here is your chance to "Ask the Experts" at State and Federal Communications, Inc. You can directly submit questions for this feature, and we will select those most appropriate and answer them here. Send your questions to: [marketing@stateandfed.com](mailto:marketing@stateandfed.com). (Of course, we have always been available to answer questions from clients that are specific to your needs, and we encourage you to continue to call or e-mail us with questions about your particular company or organization. As always, we will confidentially and directly provide answers or information you need.) Our replies to your questions are not legal advice. Instead, these replies represent our analysis of laws, rules, and regulations.

**Q. I am a registered lobbyist, and based on my time, compensation, and expenses, I have crossed the threshold prescribed by state law requiring registration. My company has employees whose contact with state legislators, executive officials, and employees meets the definition of lobbying, but they do not exceed the threshold requiring registration. Am I under any obligation to disclose their lobbying activities even though they are not registered? Is my employer?**

**A.** This is a good example of something we advise our clients all the time: know your state! Here are examples of jurisdictions where you need to know the nuances of non-lobbyist reporting requirements.

**CALIFORNIA:** You are only required to register as a lobbyist if you spend at least one-third of your time lobbying in a calendar month. However, other employees at your company might need to report their pro-rata share of compensation if they spend 10 percent or more of their time lobbying in any one calendar month.

This includes time spent involved in grassroots activity, providing research services, and preparing materials to be used for lobbying. This information is disclosed on the lobbyist employer report *Form 635* as "Other Payments to Influence Legislative or Administrative Action," *Part III*, Section D. Luckily, clerical staff are never considered non-lobbyist employees.

**NEW JERSEY:** If you are a lobbyist, you must register if you spend more than 20 hours in a calendar year attempting to influence legislation, regulations, or governmental processes by communicating with a state official. Registered governmental affairs agents must disclose their operational costs, including compensation paid to support personnel, including legal, technical, and clerical staff. Now for the big exception. The compensation of an employee working less than 450 hours per calendar year in support of a governmental affairs agent is not reportable. (TIP: We advise you have support personnel track their time to ensure they do not exceed the 450-hour threshold.)

**TEXAS:** In this state, you are either a lobbyist or not – there is no in-between. In addition, individuals registered in Texas only report their own expenditures. Compensation is not reportable. Ever.

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### State and Federal Communications, Inc. Scrapbook



The State and Federal Communications, Inc. team meets Shrek at PAC Grassroots Orlando, FL. Left to R: Ren Koozer, I.T. Director, Bobbi Simpson, Marketing Assistant, Elizabeth Z. Bartz, President and CEO, and Joseph May, Researcher.

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## State and Federal Communications, Inc. Scrapbook



Shrek with Elizabeth at  
PAC Grassroots - Orlando, FL



JC Watts and Bobbi Simpson, Marketing Assistant  
at PAC Grassroots - Orlando, FL



Myra Cottrill, Compliance Associate,  
and Amy Broadhurst, Executive  
Communications, Inc. at  
Innovate to Motivate - New Orleans, LA