



NAVIGATING THE WAVES OF CHANGE

FARM BUREAU - CONFRONTING THE ISSUES

Policy Development 2011 Corporate Contributions Now Allowed in Tennessee

Issue:

A 2010 U.S. Supreme Court decision opened the door for states to allow corporations to make political contributions. The Tennessee General Assembly promptly made changes to state law allowing corporations to legally contribute where they once had been banned. Tennessee lawmakers first permitted independent expenditures for communications regarding the election or defeat of a candidate and then the following year (2011) chose to allow corporate contributions directly to candidates. The judicial decision and resulting legislative change will alter the way dollars flow to political campaigns.

Tennessee Farm Bureau Federation members have opposed the formation of a Political Action Committee. In light of the recent developments, how should the Federation respond to request for corporate contributions?

Background:

In 2010 *Citizens United v. Fed. Election Comm'n*, 130 S.Ct. 876 (2010) concluded there is no legitimate governmental interest justifying a ban on independent corporate expenditures. The case involved a challenge to a federal law prohibiting corporations and unions from using corporate dollars to make independent expenditures for speech that expressly advocates the election or defeat of a candidate or for speech that is an "electioneering communication".

Citizens United (Citizens), a tax-exempt, nonprofit corporation, issued in January 2008 a "documentary" entitled *Hillary: The Movie*, critical of then-Senator Hillary Clinton, a candidate for U.S. President. The release coincided with the 2008 election cycle. Citizens' anticipated their plans potentially conflicted with certain sections of the [Bipartisan Campaign Reform Act of 2002 \("BCRA"\)](#), also known as the McCain-Feingold Act. So, Citizens' sought an injunction to block the FEC from enforcing those sections on the grounds they violated the First Amendment to the U.S. Constitution. The claim was heard by the U.S. District Court for the District of Columbia which ruled the act was constitutional. Citizens' appealed the case to the U.S. Supreme Court.

The Supreme Court reversed the decision of the lower court with regard to the ban on independent corporate expenditures. The Supreme Court noted that the prohibition on corporate independent expenditures was a ban on political speech and, therefore, subject to strict scrutiny. The Court reaffirmed that First Amendment protection extends to corporations and that political speech does not lose First Amendment protection "simply because its source is a corporation."

Following the U.S. Supreme Court decision, Tennessee lawmakers questioned the constitutionality of the Tennessee statute prohibiting corporate contributions (*then contained in TCA 2-19-132*). Tennessee's AG opined the statute prohibits the use of corporate funds for the purpose of aiding either in the election or defeat of candidates. The prohibition included both direct contributions to a candidate and independent expenditures. Furthermore, the AG opined that in light of the Supreme Court's decision in *Citizens United*, a court would likely hold Tennessee's law unconstitutional to the extent it prohibits corporations from making independent expenditures for the purpose of aiding either in the election or defeat in any primary or final election of a candidate for public office.

Following the Tennessee AG's opinion, the General Assembly repealed Tennessee statutes governing the use of corporate funds (PC 1095) in elections (*TCA 2-19-132 & 2-19-133*) and added a new section to the state

campaign finance law (TCA 2-10-131). PC 1095 continued to prohibit corporate contributions directly to candidates but authorized the use of funds for communications regarding the election or defeat of a candidate and specified the reporting requirements and exceptions.

Then in 2011 lawmakers further revised Tennessee's fundraising and ethics law to end the prohibition of corporate contributions directly to political candidates. Therefore, it is now legal for corporations and businesses to make campaign donations directly to candidates. In the same bill, lawmakers also raised the amount of money that all political donors can give. *(The new law does not apply to insurance companies as a result of a state law enacted in 1907 (TCA 56-3-601) prohibiting political funding by insurance companies. Legislation is expected in the 2012 session to apply the corporate contribution changes to apply to insurance companies in the same manner as other corporations.)*

Today, corporations are automatically designated as Political Campaign Committees if the corporation contributes an amount in excess of \$250 per calendar quarter to support or oppose any candidate for public office. Corporations utilizing this new law and making contributions are required to complete filings related to contributions. Limits applicable to PACs also apply to corporations; PAC limits are higher than individual caps.

Campaign contribution limits for political campaign committees established by previous law are adjusted to reflect the consumer price index for the period of January 1, 1996, through December 31, 2010, thereby raising the limits. This requires contribution limits to be adjusted and rounded to the nearest multiple of \$100 on January 1, 2013, and every two years thereafter, to reflect changes in the consumer price index.

Question:

How should the Tennessee Farm Bureau Federation respond to requests for corporate contributions related to politically oriented educational ads?.... To political party events?.... Directly to candidates?

Farm Bureau Policy

Our government's elected officials should be loyal to all voters, rather than to the organizations who funded their campaign. Therefore, political contributions should be strictly controlled and limited.

Congress should treat all political campaign expenditures, other than individual contributions, the same as PAC contributions. This should include independent expenditures and educational ads that enhance one political candidate over another. We are opposed to political contributions from foreign countries.

The total yearly contribution of any Political Action Committee should be limited to \$100,000.

We support the idea of a citizen congress, and believe reasonable limits on PAC expenditures enhance the chances of returning to citizen controlled legislative bodies at both the state and federal level.

We are opposed to a Farm Bureau PAC until approved by the delegate body at a state convention.