EFFECT OF C I T I Z E N S U N I T E D O N 
P E N N S Y L V A N I A E L E C T I O N L A W S T A T U T E S 
by John Lavelle

Earlier this year, the United States Supreme Court handed down a landmark decision about how our nation finances political campaigns in *Citizens United v. Federal Election Commission.*\(^1\) Using the First Amendment as its basis, the Court found unconstitutional the Congressional ban on corporations and labor unions making independent expenditures that advocated the election or defeat of a clearly identified candidate for public office. The impact of the decision reached beyond the statute examined in the case, the Federal Election Campaign Act (FECA), and federal elections. It had implications for statutory provisions governing the conduct of elections in this Commonwealth.

In particular, the Court's ruling affected a portion of section 1633(a) of the Pennsylvania Election Code.\(^2\) This subsection addressed independent expenditures made by certain entities in state or local elections among other things.\(^3\) The Election Code defines independent expenditures as those expenditures occurring when the spending entity does not cooperate or consult with the candidate or her campaign regarding the expenditure.\(^4\) The subsection in question disallowed national and state banks, corporations and unincorporated associations from making independent expenditures in any amount. However, the specified entities were permitted to

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2 25 P.S. § 3253(a).
3 *Id.*
4 25 P.S. § 3241(e).
contribute through a political action committee (PAC) when making an independent expenditure.\(^5\)

As a result of the *Citizens United* decision, the prohibition in 1633(a) became unenforceable.\(^6\) The Department of State noted, "section 1633(a) cannot be administered constitutionally to prohibit a domestic corporation or unincorporated association from making 'independent expenditures.'"\(^7\) In turn, domestic corporations and labor unions are no longer required to use a PAC when making independent expenditures. This change allows the previously prohibited entities a more direct avenue to support or oppose a candidate's campaign for public office. In practical terms, the new legal framework allows domestic corporations and labor unions to use their own funds when running television or Internet ads, leasing billboard space, creating websites or sending direct mailers that are not coordinated with a candidate or her campaign. Furthermore, no limit has been put in place regarding the amount spent on independent expenditures since the *Citizens United* decision.

Remaining intact is the prohibition regarding direct expenditures to a candidate or her campaign committee.\(^8\) This provision prevents domestic corporations and labor unions from dipping into their coffers when giving to a candidate or her campaign. They are free however to donate to an election campaign through a PAC.

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\(^5\) 25 P.S. § 3253(a).


\(^7\) *Id.*

\(^8\) 25 P.S. § 3253(a).
The decision also upheld the law regarding disclaimers in campaign advertising. Existing law obligates campaign ads to identify the person or entity making or financing the expenditure for the communication. In addition, reporting requirements under both FECA and the Pennsylvania Election Code went unchanged by the decision.

The Supreme Court did not resolve the issue of whether a foreign corporation may make an independent expenditure influencing the election or defeat of a candidate for office in the United States. Pennsylvania law expressly prohibits foreign corporations from making expenditures, independent or otherwise, to a candidate or her campaign committee. Therefore, the decision by the Court did not alter the role of foreign corporations in elections for public office at the state or local level in this Commonwealth.

In sum, after Citizens United, the major difference in Pennsylvania's election law involves independent expenditures and who may make use of them. No longer is this type of campaign spending available to only PACs. Domestic corporations and labor unions may now employ independent expenditures to their advantage in what appears to be quite a significant manner. It is uncertain however to what extent this change will have on the outcome of Pennsylvania's future elections.

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9 25 P.S. § 3528(a)(2).
11 25 P.S. § 3253(a).