

# **Independent Expenditures by Corporations, Unions and Domestic Dependent Sovereigns U.S. Supreme Court Decision Issued January 21, 2010 Citizens United v Federal Elections Commission**

## **UPDATED: Impact of Recent Federal Court Cases on Independent Expenditures by Corporations, Unions and Domestic Dependent Sovereigns**

The U.S. Supreme Court's recent decision in Citizens United v Federal Election Commission, 130 S Ct 876, 175 L Ed 2d 753 (2010), directly impacts the Michigan Campaign Finance Act (MCFA). By overruling its 1990 decision in Austin v Michigan Chamber of Commerce, the Supreme Court declared that section 54(1) of the MCFA is unconstitutional to the extent that it prohibits independent expenditures by corporations, labor organizations or domestic dependent sovereigns.

With the decision, corporations, labor unions, or domestic dependent sovereigns may use their treasury funds for independent expenditures on behalf of state or local candidates. There is no limitation on the amount of money that can be spent nor is there any restriction on the time frame for independent expenditures. Another decision, issued July 23, 2010 in the case of MI Chamber of Commerce et al v Land, 2010 US Dist LEXIS 75186 (WD MI, 2010), authorizes corporations, labor unions, or domestic dependent sovereigns to make contributions to political committees that are organized exclusively for the purpose of making independent expenditures that are not in any way directly or indirectly "coordinated" with any candidate, candidate committee, political party, or political party committee.

It is important to note that corporations, labor unions, or domestic dependent sovereigns remain prohibited from using their general treasury funds to make contributions directly to candidate committees, independent committees, political committees (other than those described above), political party committees, or House or Senate political party caucus committees.

### **Registration and Reporting Requirements**

A corporation, labor union, or a domestic dependent sovereign must register as an "independent expenditure political committee" under the MCFA after spending \$500.00 or more in independent expenditures in support of or opposition to state or local candidates in a calendar year. In addition, groups other than a corporation, labor organization or domestic dependent sovereign that intend to act as an independent expenditure committee must register as an independent expenditure committee after spending \$500.00 or more in independent expenditures in support of or opposition to state or local candidates in a calendar year.

Independent Expenditure Committees are commonly referred to as Super PACs.

The committee is registered by filing a [Statement of Organization](#) with the appropriate filing official within 10 calendar days of meeting or exceeding the \$500.00 threshold. The threshold is met with a single independent expenditure or a series of independent expenditures. The name(s) of the sponsoring corporation(s), labor union(s), or domestic dependent sovereign(s) must be included in the name of the committee. A separate committee is required to be registered even if the corporation, labor union, or domestic dependent sovereign has a registered Separate Segregated Fund.

The independent expenditure political committee is then required to file detailed campaign statements disclosing its contributions and independent expenditures. Campaign Statements are required to be filed by state level committees four (4) times a year with specific coverage dates and filing deadlines. State level committees that spend or receive \$5,000.00 or more in any calendar year must file electronically.

Local level committees must follow the filing schedule required by MCFA for local political or independent committees (PACs).

A committee that does not spend or receive in excess of \$1,000.00 in a calendar year may qualify for a reporting waiver and the Campaign Statements mentioned above may be waived. A reporting waiver is requested by filing an original or amended Statement of Organization form with item 8 checked. For additional information on registering a committee, filing campaign statements and the reporting waiver, please see the [Political and Independent Committee \(PAC\) Manual](#) that is available on the Department of State's web site.

A corporation, labor organization, domestic dependent sovereign or other group that intends to act as an independent expenditure committee (Super PAC) must file an *Independent Expenditure Report* if it spends between \$100.00 and \$499.99 in a calendar year on independent expenditures and has not yet registered an independent expenditure political committee as explained above. The [Independent Expenditure Report](#) form is available on the Department of State's web site.

### **Frequently Asked Questions (FAQ)**

#### **Can groups other than a corporation, labor organization or domestic dependent sovereign that want to act as an independent expenditure committee register as an independent expenditure committee (Super PAC)?**

Yes. While the Supreme Court decision speaks to the activity of corporations, labor organization and domestic dependent sovereigns, it does not limit the formation and registration of these committees by other groups. Corporations, labor organizations and domestic dependent sovereigns are free to contribute to any registered independent expenditure committee (Super PAC). All committees registered as an independent expenditure committee must follow the requirements of the MCFA.

#### **Is there any limit on the amount of money that a corporation, labor union, or domestic dependent sovereign can spend on independent expenditures for candidates or ballot proposals?**

No. There is no limit on the amount of money that can be spent on independent expenditures.

#### **Is there a limited time frame when an independent expenditure can be made?**

No. Independent expenditures can be made at any time. Care should be taken to ensure that the reporting requirements are met either by disclosing the independent expenditures in a required Campaign Statement or an *Independent Expenditure Report* as appropriate.

#### **What election types are included in the *Citizens United* and *MI Chamber of Commerce* decisions?**

Corporations, labor unions, or domestic dependent sovereigns can make independent expenditures to support or oppose candidates in any state or local primary, general, special or recall election, or any political party caucus or convention.

#### **Can a corporation, labor organization, or domestic dependent sovereign make a contribution consisting of general treasury funds to a candidate?**

No. The prohibition on corporate, union, or tribal contributions to candidates and committees that make contributions to candidates remains in effect. Corporations, labor unions, or domestic dependent sovereigns may not make contributions to candidates, candidate committees, independent committees, political committees (other than independent expenditure political committees), political party committees, or House or Senate political party caucus committees.

**Can a corporation, labor union, or domestic dependent sovereign contribute treasury funds to an independent expenditure political committee?**

Yes. Under *MI Chamber of Commerce et al v Land*, corporations, labor unions, or domestic dependent sovereigns cannot be prohibited from making contributions to an independent expenditure political committee so long as the independent expenditures are not, in any way, directly or indirectly "coordinated" with a candidate, candidate committee, political party, or political party committee. The Department of State will consider an expenditure to be coordinated, and therefore prohibited, if it:

1. Was made in concert or cooperation with or at the request or suggestion of the candidate, candidate committee, or political party committee, or any of their agents, within the meaning of MCL 169.209(2); or
2. Was "made at the direction of, or under the control of, another person" within the meaning of MCL 169.209(2); or
3. Does not meet the definitions described above, but otherwise constitutes *quid pro quo* corruption or reasonably fosters the appearance of *quid pro quo* corruption.

These factors are set forth in the July 23, 2010 order in the case of *MI Chamber of Commerce et al v Land*, 2010 US Dist LEXIS 75186 (WD MI, 2010).

**In view of *Citizens United* and *MI Chamber of Commerce*, what corporate, union, or tribal activity is prohibited by the MCFA?**

Section 54 of the MCFA prohibits corporations, labor unions, or domestic dependent sovereigns from making contributions to candidates and committees that make contributions to candidates. It also prohibits corporations, labor unions, or domestic dependent sovereigns from pooling resources to make independent expenditures that are in any way:

Directed by ...	→	Any candidate or his or her agent.
Controlled by ...		
Coordinated with ...		Any candidate committee or its agent.
Made at the suggestion of ...		
Made in concert with ...		Any political party or its agent.
Made in cooperation with ...		
Made at the request of ...		Any political party committee or its agent.

**Do these decisions affect how corporations, unions, or domestic dependent sovereigns can participate through a registered Separate Segregated Fund?**

No. Prior to the *Citizens United* and *MI Chamber of Commerce* decisions, corporations, labor organizations, or domestic dependent sovereigns could only contribute to candidates or make independent expenditures through the creation of a separated segregated fund, commonly referred to as a PAC. The PAC is funded through contributions made by certain qualified contributors, and no corporate, union, or tribal treasury monies can be transferred to the PAC.

**Can the corporate, union, or tribal treasury funds be commingled with the Separate Segregated Fund of the corporation, labor union, or tribe?**

No. Treasury funds cannot be commingled with funds that are distributed to candidate committees, independent committees, political committees (other than those that exclusively make independent expenditures), political party committees, or House or Senate political party caucus committees.

**Were any of the reporting and disclosure requirements of the MCFA affected by the *Citizens United* and *MI Chamber of Commerce* decisions?**

Yes. The MCFA's reporting requirements must be reconciled with the First Amendment rights of corporations, labor unions, or domestic dependent sovereigns to make independent expenditures in support of or in opposition to candidates, and to make contributions to independent expenditure political committees. See "Registration and Reporting Requirements" section above.

**What must be reported if less than \$100.00 in a calendar year is spent on independent expenditures by a corporation, labor union, or domestic dependent sovereign not required to be registered under the MCFA as an independent expenditure political committee?**

Nothing; however, records must be kept and reviewed to determine if and when a reporting threshold is reached.

**Does the decision affect how the Department interprets "Express Advocacy" in Michigan?**

No. The decision has no effect on the Department of State's interpretation of express advocacy as it pertains to Michigan elections. Communications that do not expressly advocate the nomination or election of a candidate or the qualification, passage or defeat of a ballot question are not subject to the MCFA.

**What, if any, requirement is there to provide an identifier or disclaimer on print or broadcast advertisements purchased as an independent expenditure?**

The identifier and disclaimer requirements of Section 47 of the MCFA were not affected by the decision. All printed or broadcast advertisements purchased as an independent expenditure in support of or opposition to a candidate must contain an identifier and disclaimer. For more information see [Appendix J](#) of the *Political and Independent Committee (PAC) Manual*.

**Do the *Citizens United* and *MI Chamber of Commerce* decisions affect how corporations, labor unions, or domestic dependent sovereigns can support or oppose ballot proposals?**

No, these decisions do not affect how corporations, labor unions, or domestic dependent sovereigns can support or oppose ballot proposals. See the [Ballot Question Committee Manual](#) for more information.

**Has the Department of State issued any declaratory rulings concerning the *Citizens United* or *MI Chamber of Commerce* cases?**

Yes, on May 21, 2010 the Department of State issued a Declaratory Ruling in response to a request from Mr. Robert LaBrant. The full text of the [Declaratory Ruling](#) is available on the Department of State's website. Please note, however, that this ruling has been rescinded as ordered by the court in the *MI Chamber of Commerce* case.

**Questions?**

If you have any questions, please do not hesitate to contact this office.

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