

1/22/2010

## Hospitality Labor and Employment Advisory: Unions Can Now Spend Freely on Federal Political Ads to Advance Their Organizing Agenda

Yesterday, the U.S. Supreme Court ruled, in a narrow 5-4 decision, that labor unions and corporations are permitted to spend as much as they want on their own campaign ads to support or oppose federal political candidates. In *Citizens United v. Federal Election Commission*, the Court overruled a 20-year-old ban on this type of political spending and struck down part of the historic McCain-Feingold campaign finance law that prevented labor unions and corporations from spending money on issue ads in the days immediately preceding an election.

While unions and corporations are still prohibited from contributing directly to federal candidates or to political action committees, the Court's decision undoubtedly will unleash a significant amount of campaign spending through independent expenditures not associated with a particular campaign. The Court majority concluded that the strict campaign spending limits amounted to an unconstitutional restraint on free speech in violation of the First Amendment. Justice Anthony Kennedy read the majority's opinion from the bench and declared that the ban on political spending "uses censorship to control thought" and chills "political speech."

This ruling will have a significant impact for the hospitality industry and, in particular, for those employers who face union interference with their workforce. With the unlimited flood of money that is now free to be spent in upcoming mid-term elections, employers should expect to see increased organizing pressure from labor unions through corporate campaigns and through efforts to pass neutrality, living wage, card check, or other pro-union legislation. Unions will be free to put their significant financial resources into issue ads that attack perceived anti-labor companies and positions.

Of course, corporations are also now free to spend money on advertising in response to union pressure, and should begin to think about setting practices to combat the imminent unleashing of campaign cash by labor this election year. For those companies with concerns of union organizing at their operations, we have advised clients to take several proactive and preventative measures, including:

- Wage and benefit assessments
- An employee vulnerability analysis
- A "Top 10" list of employee concerns
- Managers' Do's and Don'ts
- Avoiding unfair labor practice traps

\* \* \*

**For more information about this Advisory, please contact: Jay P. Krupin or Kara M. Maciel in Washington, DC; Michael S. Kun in Los Angeles; or Allen B. Roberts in New York.**