

# ALABAMA CASE COULD SIGNAL MORE TURMOIL IN CAMPAIGN FINANCE LAW

BY JEFF BRINDLE | 11/02/16 10:53am

The fact that campaign finance law is in an unsettled state was underscored recently by the United States Court of Appeals, Eleventh District, when it upheld Alabama's ban on transfers of money between political action committees (PACs).

In *Alabama Democratic Conference (ADC) vs. Attorney General, State of Alabama*, the appeals court rejected a challenge to a new Alabama law that bans one PAC from contributing to another.

ADC, a large grassroots organization in Alabama, is committed to encouraging voters of African-American descent to support candidates the ADC believes supports the interest of the black community.

Not unlike many grassroots political organizations, ADC raises and spends money to elect candidates it endorses for Alabama state elections.

Other PACs, including the Alabama Democratic Party, historically were a rich source of money for the organization.

In 2010, the Alabama State Legislature passed legislation, ultimately enacted into law, that banned transfers of funds from one PAC to another.

In other words, PACs could give to candidates but they could not give to each other.

Besides the ban on PAC to PAC giving, the law explicitly prohibited ADC from receiving contributions from the Alabama Democratic Party, despite being independent of that entity.

In order to comply with the law and still be able to access its traditional sources of funding, the ADC established separate bank accounts, one for candidate contributions and one for independent expenditures.

When this restructuring was still disallowed, ADC sued the State of Alabama in 2011, arguing that the new law “violated its First and Fourteenth Amendment rights.”

The ADC maintained that under *Citizens United vs. FEC*, the State of Alabama could not regulate independent expenditures.

Initially, the challenge went ADC’s way. The United States District Court for the Northern District of Alabama granted summary judgment on behalf of ADC, enjoining the State from enforcing the law.

Alabama appealed the ruling and the Eleventh District Appeals Court reversed the ruling of the District Court.

It’s ruling asserted “in prohibiting limits on independent expenditures, *Citizens United* heavily emphasized the independent, uncoordinated nature of those expenditures, which alleviates concerns about corruption. But the independence of an organization like the ADC, which both makes independent expenditures and contributes directly to candidates, may be called into question and concerns of corruption may reappear.”

The decision by the Eleventh District further adds to the unsettled state of campaign finance law in America. Other courts throughout the nation have weighed in on this issue, some supportive of the court’s decision, some in conflict with it.

For example, in *Carey vs. Federal Elections Commission*, 2011, the D.C. District Court dealt with a similar issue and rendered a decision that ushered in the era of Super PACs.

The Court allowed corporations and unions to create PACs that contained one account for making contributions to candidates and a separate, segregated account for independent expenditures only. This decision came after the D.C. Court of Appeals in *Speech Now*, 2010,

allowed unlimited contributions to and spending by PACs provided their activity was independent.

Furthermore, the Tenth Circuit Court of Appeals, in *Republican Party of N.M. vs King*, found that “separate bank accounts are sufficient to alleviate corruption concerns.”

On the other hand, the Second and Fifth Circuits, in *Vermont Right to Life Committee, Inc. vs. Sorrell* and *Catholic Leadership Coalition of Texas vs. Reisman* respectively, found that “a separate bank account was not sufficient to alleviate a state’s corruption concern” and that a state had a “valid anti-corruption interest” in protecting contribution limits.

In essence, the courts are trying to decide- when is a political fund-raising committee truly independent in this post-Citizens United era.

Because of the conflicting opinions and the importance of the issue, it is quite possible that this question will reach the U.S. Supreme Court. If the high court comes out with a new precedent, it could even have a ripple effect in New Jersey if a future legislature moves to ban PAC-to-PAC transfers.

How the court will decide may well depend on the outcome of the presidential election and the individual who becomes the ninth member of the High Court.

But for now, this and other issues related to campaign finance law leaves the field in a state of uncertainty and flux.

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**The opinions presented here are his own and not necessarily those of the Commission.**