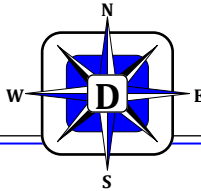


John Davis Political Report



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Business Decision 2010: Unilateral Disarmament or Political Action

Citizens United Seminar Speakers Lead the Way for Corporations and Trade Associations

John N. Davis, President

John Davis Political Report is a weekly political essay about the events impacting North Carolina's 2010 elections. A Premium Subscription through the 2010 elections is only \$500. **Make checks payable to John Davis Consulting, EIN 26-3064837, and mail to P.O. Box 30714, Raleigh, NC 27622.** Davis has followed NC politics for 24 years, serving as President of NCFREE, a political research group, where he was Editor of the *Almanac of North Carolina Politics*. Davis specializes in analyzing political trends, candidates and campaigns.

"Today, the days of Alice in Wonderland budgeting in Trenton end."

Chris Christie, newly elected GOP Governor of New Jersey, Joint Session of Legislature, Feb. 11, 2010

The Highest Risk Option for Business in 2010 is Unilateral Political Disarmament

Leveling NC's Political Playing Field: How to Use New Business Free Speech Rights, was the topic for a seminar hosted on Monday by Longistics. Four experts addressed the legal and practical application of the new rights to corporate-funded independent expenditure ads, recently granted by the U.S. Supreme Court. Speaking to the law were attorneys Robert S. LaBrant, Sr. VP, Political Affairs & General Counsel, Michigan Chamber, and Stephen B. Long, a partner with Williams Mullen, Raleigh. Speaking to the practical application of the law were political consultants Chris Sinclair, Cornerstone Solutions, and Neal Rhoades, Southeast Strategies.

Many businesses and their trade associations are weighing the risks of using corporate-funded independent political ads. This report offers suggestions from our speakers for low, medium and high risk options for your consideration. First, I would like to present the highest risk option: unilateral disarmament. This is what business has been doing. It's why we have so few allies.

Last Thursday, Chris Christie, newly elected GOP Governor of New Jersey, said to a Joint Session of the Legislature, "Today, we come to terms with the fact that we cannot spend money on everything we want. Today, the days of Alice in Wonderland budgeting in Trenton end."

If you like Christie's statement, then work to elect lawmakers who think like that. Use all of the political tools at your disposal, including your PAC and the new right to corporate-funded independent expenditure ads. It's time to stop the high risk politics of unilateral disarmament.

New Laws from the *Citizens United* U.S. Supreme Court Decision

- Corporations and unions may not be restricted in making independent expenditures from their general treasury funds on behalf of candidates for political office.
- Corporations and unions may now engage in express advocacy (calling for the election or defeat of a candidate) through independent expenditures, throughout the campaign.
- Trade associations organized under IRC § 501 (c) 6 and other groups organized under IRC § 501 (c) 4 may receive corporate and union funds to engage in express advocacy.
- Corporations may now send express advocacy communications to all employees, calling for the election or defeat of a candidate, in federal races (previously only state races).

What Did NOT Change

- Corporations and unions still may not make direct contributions to candidates and political parties (22 states, where 60% of Americans reside, allow direct corporate and labor union contributions to candidates. North Carolina is not one of them).
- Trade associations organized under IRC § 501 (c) 6 and tax exempt groups organized under IRC § 501 (c) 4 still may not devote half or more of their time and resources to political activity. Almost half, 49.9% of your time and resources is permissible.
- Charities, churches and other organizations exempt from taxation under IRC § 501 (c) 3 still may not engage in political campaign activity.
- Ad disclaimer rules and disclosure laws under the North Carolina State Board of Elections are still in place.
- The MOST IMPORTANT LAW that did not change is that you still cannot coordinate your independent expenditure ads with candidates or political parties.

How To

- Working with your association, form a committee to create a IRC § 527 independent expenditure account. Include your attorney, tax accountant and a political pro.
- Present the strategy, plan and budget for formal approval by the board of directors.
- Ask the State Board of Elections to review your plan so that everyone in your organization will be confident that all “T’s” have been crossed.
- If you would prefer to organize a completely independent group with like-minded individuals or other groups, form a IRC § 501 (c) 4 tax exempt organization. It must be founded on a social welfare issue like “Keeping North Carolina business friendly.”
- File with the IRS for exempt status under IRC § 501 (c) 4.
- Remember, a IRC § 501 (c) 4 or 6 group can only devote 49.9% its budget for political activity. The remaining 50.1% must be spent on activities tied to its tax exempt purpose.
- Open a segregated bank account, raise money and work your plan.

Low Risk/Medium Risk & No Risk Options for Independent Ads

- You do not have to run negative ads. There is great value in ads that help the voting public appreciate what select representatives are doing for them in Raleigh.

- You can create an IRC § 527 issue advocacy account and stick to issues and stay away from express advocacy like calling for the election or defeat of a candidate. Note: All donors of \$200 or more to an IRC § 527 are disclosed on the IRS web site.
- Keep your PAC well-funded and active throughout 2010. There are many OPEN SEAT races that do not involve an incumbent. Only support your allies in these races.
- Think niche, niche, niche: just do drive time radio; just do airplane banners.
- Don't go it alone. Team up with like-minded groups to form your IRC § 501 (c) 4.

Seek Expert Advice: Legal, Tax and Political

With the *Citizens United* ruling, the U.S. Supreme Court has freed you to make independent expenditures from your general treasury on behalf of candidates for political office. The only thing that remains is your decision to use this new political tool.

If you decide to avoid the high-risk option of unilateral disarmament and to get into independent expenditure political activity, you are strongly urged to seek legal, tax and political advice. The professionals at Monday's *Citizens United* seminar are among the best:

- For keynoter or legal advice on the law of *Citizens United* contact Steven B. Long, partner with Williams Mullen, Raleigh: slong@williamsmullen.com
- For keynoter or political advice/contract work on Independent Expenditure Ads contact Chris Sinclair, Cornerstone Solutions, Raleigh: chris@cornerstonesolutionsteam.com
- For keynoter or political advice/contract work on Independent Expenditure Ads contact Neal Rhoades, Southeast Strategies, Raleigh: neal@southeaststrategies.com

What to Expect ... and What Not to Expect in 2010

You can expect more political money invested in 2010 than ever before. Everyone will be making sure that the other guys are not gaining on them by taking advantage of the new law created by the *Citizens United* decision. Political Action Committees and 527 Issue Advocacy Campaigns will be more important than ever to those who are beginning to realize that they are fast losing what little advantage they have left to outside groups like SEANC and SEIU, who invested \$2,054,271 in North Carolina politics in 2008. They, along with fellow public employee unions NEA and the NCAE, invested \$1,846,219 to help Beverly Perdue win the governor's race in 2008.

If you would like for the days of Alice in Wonderland budgeting in Raleigh to end, then use all of the political tools at your disposal, including the new right to corporate-funded independent political ads. It's time to stop the high risk politics of doing nothing; of unilateral disarmament.