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In a special session, a slim majority of the U.S. Supreme Court—five justices vs. four—has overturned a law restricting corporate spending in favor of or against political candidates. The new case is expected to have significant overtones in campaigns this year.

Background: A conservative advocacy group, called Citizens United, claimed that the Federal Election Commission (FEC) had violated its free speech rights by preventing it from using funds to air a movie during the 2008 presidential campaign. The movie was critical of then-Senator Hillary Clinton, who was stumping for the Democratic nomination.

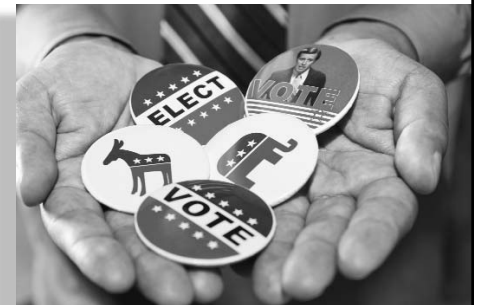
The FEC based its position on the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act). Ironically, the act was cosponsored by Senator John McCain, who won the 2008 Republican presidential nomination, only to lose the election to then-Senator Barack Obama.

Under the McCain-Feingold Act, a corporation or union is barred from

using its own funds to support or discredit a candidate. However, it may establish a political action committee to accept donations from employees and shareholders. In addition, the act imposes disclosure requirements for such contributions. The Citizens United group, a nonprofit organization, fell under the umbrella of the McCain-Feingold Act because it received support from business entities.

Lower courts sided with the FEC. After initially hearing the case on whether the law applied to the anti-Hillary Clinton movie, Chief Justice John Roberts requested a special session to rule on the larger issue of the constitutionality of the McCain-Feingold law. Commentators on both sides of the political fence anxiously awaited the outcome.

Result: Ultimately, the highest court in the land overturned two prior cases involving restraints on corporate spending under the McCain-



(see Political spending on next page)

NEW LAW EXPANDS COBRA SUBSIDIES

A new federal law enacted late last year extends the COBRA subsidy program available to workers who are “involuntarily terminated” from their jobs.

Background: Under the 1985 law known as COBRA (short for Consolidated Omnibus Budget Reconciliation Act), an employer with 20 or more employees is required to provide continuation of health insurance coverage when an employee is laid off or fired. The continued coverage is generally allowed for a maximum period of 18 months. But the ex-employee usually has to pay for the premiums. In addition, the employer may charge a 2% administrative fee.

The American Recovery and Reinvestment Act of 2009 (ARRA) created a discount for qualified workers. Under ARRA, an ex-employee can elect to pay for coverage at a reduced rate of 35% of the usual cost. The employer must pick up the remaining 65% of the tab. **Saving grace:** Employers can recoup their costs through employment tax credits or reduced withholding deposits.

The discount is available for most terminations and layoffs. However, if an employee is fired due to “gross misconduct,” such as payroll embezzlement or theft of company property, the COBRA subsidy is denied.

There is another catch: This discount is phased out for high-income taxpayers. Single filers with an AGI exceeding \$125,000 and joint filers with an AGI exceeding \$250,000 must repay part of the amount as an

additional tax. The phaseout is complete at \$145,000 of AGI for single filers and \$290,000 for joint filers.

Now the new Defense Appropriations Act of 2010 expands the provisions initially included in the ARRA. Here are the main changes:

- ◆ Previously, the program was available only for involuntary terminations between September 1, 2008, and December 31, 2009. Now eligibility is stretched out two more months through February 28, 2010.
- ◆ The length of time an ex-employee can benefit from the subsidy is expanded from nine months to 15 months. Thus, some ex-employees can continue paying reduced COBRA premiums well into 2011.
- ◆ Credit against future payments must be provided to qualified employees who paid the full premium in December 2009. If you are an employee affected by this provision, contact your health insurance administrator.
- ◆ Employers are required to provide notice to eligible ex-employees about the changes in the COBRA subsidy program.

Update: More new legislation has extended eligibility through March 31, 2010. Any further developments will be reported in this publication. ✍

TOP COURT LOOSENS POLITICAL SPENDING

(continued from front page)

Feingold Act. In doing so, it ruled, as set out in the majority opinion by Justice Anthony Kennedy, that the Act constitutes censorship and violates the free speech rights of corporations and unions. A strong dissent spanning 90 pages was issued by Justice John Paul Stevens. **Note:** The decision preserves the part of the law requiring disclosure of political donations.

What is the impact of the new Supreme Court case? It is not yet clear. The ruling could open the door to a flood of increased advertisements by well-heeled business entities and organizations backing the candidates of their choice or drowning other candidates in a sea of negative ink. But some experts downplay the potential effect on the election process.

To complicate matters, legislative proposals in Congress would counteract the ruling in the new case. We will report any significant developments in a future issue. ✍



Romantic Tension: A Bumpy Landing

Romantic or sexual tension between employees may cause problems in the workplace. When that happens, your company may fire one of the employees. This could lead to a sexual discrimination lawsuit.

New case: A female pilot who ended an affair with another pilot was cited by her ex-lover for poor flying skills. After management investigated, it found out about the broken romance but still pulled the female pilot from flight duty.

In this instance, the Ninth Circuit Court determined there was sufficient evidence that the sexual tension, not objective flying skills, was the basis for removal of the employee. Accordingly, it sent the case to trial.

ZERO IN ON ZONING LAWS

If you are thinking about buying new business property or improving property you already own, it is advisable to investigate the local zoning laws. This may affect whether or not you proceed and, if you decide to proceed, how you go about it.

Basic rules: Real estate is typically zoned for either commercial or residential use. For instance, normally you cannot construct a warehouse in a residential neighborhood or build a two-story house in a downtown business district. Other types of zoning use may pertain to agricultural, industrial or recreational activities.

Zoning ordinances impose certain restrictions. Generally, they will relate to aspects such as the

- ◆ Height and overall size of buildings
- ◆ Proximity of one building to another
- ◆ Percentage of the area of a building lot that can contain structures
- ◆ Particular kinds of facilities that must be included with specific types of use

For example, a zoning law may limit the number of stories and total height of a building, require a number of parking spaces for an industrial building or mandate setback and side-yard requirements for a residential property.

Obtaining a change in a zoning ordinance may be a difficult process. It requires public notification and official approval from the appropriate government agency. Depending on the circumstances, opposition by individuals, businesses or other interested parties can thwart your intentions.

Here are three problematic situations you might encounter in this area.

1. Nonconforming use: Currently, you may be using a property in a manner that conflicts with a new zoning ordinance. The use may be “nonconforming” because of the nature or characteristics of the building itself or be based on the activity being conducted in the building.

As a general rule, you do not have to stop the nonconforming use after the new zoning ordinance has been adopted if the use is “grandfathered.” However, the right to continue a nonconforming use may be forfeited if the circumstances change.

2. Conditional use: A conditional use is one that is permitted under a zoning ordinance, but only as long as certain conditions are met. For example, an ordinance may permit construction of a medical or dental office in a residential zone if a specified number of off-street parking places are provided. If a use is conditional, the zoning ordinance will often require you to file an application to determine if the conditions have been satisfied.

3. Variances: A variance or special-use permit is an exception to the requirements of a zoning ordinance. The local statutes relating to the adoption of zoning ordinances may also spell out the requirements for having a variance granted. Usually, you must demonstrate a hardship to qualify for the variance.

These rules are complex, but you do not have to undertake these efforts alone. Contact an experienced attorney to help navigate the local zoning laws. ☞



AVOIDING WEIGHT BIAS CLAIMS

Besides the obvious health-related issues, an increase in obesity rates is having an impact in the workplace. According to the Equal Employment Opportunity Commission (EEOC), weight discrimination is almost as common as racial, age or gender discrimination. The controlling federal law in this area is the Americans with Disabilities Act of 1990 (ADA).

Basic rules: Obesity, in itself, does not automatically entitle an employee to protection under the ADA. The standard position of the EEOC is that the ADA covers “morbid” obesity (i.e., a body weight more than 100% over the norm) and obesity caused by a physiological disorder.

However, the courts do not have to agree with the EEOC, one way or the other. For example, the Sixth Circuit Court of Appeals recently ruled that even morbid obesity must be the result of a physiological condition to constitute a violation. Nevertheless, your company is not immune from claims by employees. Weight discrimination lawsuits may be initiated in the following situations:



- ◆ The employee has a related health condition related to weight, such as diabetes, heart disease and hypertension. This may result in ADA protection regardless of the degree of the condition or the cause of the obesity.

- ◆ Weight standards are based on gender. In one landmark case, the Ninth Circuit ruled that an airline’s weight-limit requirement was discriminatory on its face. Reason: Male employees were limited to maximum weights corresponding to large body frames for men while

women were limited to maximum weights corresponding to medium body frames for women.

- ◆ The employer relies on assumptions or stereotypes. Although the ADA excludes individuals who pose a direct threat to the health or safety of themselves or others, do not assume that a threat exists for an obese, or even morbidly obese, individual. Establish through medically supported methods that there is a significant risk that substantial harm could occur if the employee were to carry out the essential functions of his or her job.

The problems can go beyond the threat of lawsuits from employees. Employers may be concerned, both legally and morally, about rising costs associated with obesity in the workplace.

Practical idea: Your company may implement a weight reduction program and maintain a healthier workplace culture. ↵

B R I E F S

- ◆ **Health Precautions**—Can your company keep employees away from the office due to concerns about the H1N1 flu virus or some other outbreak? The Equal Employment Opportunity Commission (EEOC) provides guidelines on this point, as well as related issues, in a new fact sheet. You can find “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act” at www.eeoc.gov/facts/pandemic_flu.html.

- ◆ **Haiti Relief**—The “Haiti Assistance Income Tax Relief Act,” signed on January 22, 2010, provides a special benefit for contributions to the earthquake relief effort. A qualified donation made before March 1, 2010, can be deducted on the donor’s 2009 tax return. The new law also allows you to use a telephone bill as proof of donations made via text message.

- ◆ **Stressed Out**—In a new case, an employee who was assigned additional duties asked for a week off to deal with her stress. When she returned, the employer fired her due to poor job performance. But she sued, claiming she was entitled to her job under the Family and Medical Leave Act (FMLA). **Result:** The New York district court denied her claim. It said that her stress problem was not a “serious health condition” covered by the FMLA.

- ◆ **E-mail Forwarding**—A company fired an employee but allowed him to continue to use his e-mail account to notify clients of the termination. The employee allegedly violated a noncompete agreement by forwarding business e-mails. But the company’s lawsuit was dismissed by a Minnesota district court. **Reason:** The employer did not have a policy prohibiting forwarding of e-mails nor did the employee break any promises.