



strategy + support for
musicians creating change

Air Traffic Control

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CITIZENS UNITED SUPREME COURT RULING & MUSICIANS WHO WANT TO ADVOCATE FOR OR AGAINST CANDIDATES

In January 2010, a Supreme Court ruling (referred to as "Citizens United") changed election law and regulations to allow all corporations, including musicians, concert promoters, record labels and other music corporations, the ability to speak about candidates as long as they are not coordinating with a candidate or a campaign. Because most bands are incorporated for liability protection and therefore considered corporations, these changes greatly impact musicians.

ATC requested the following memo from our Federal Election lawyer detailing these changes, and several communication scenarios specific to musicians. The memo also outlines parts of election law and regulations that have not changed. President Obama has said that he plans to combat this with legislation to stop corporations from engaging in elections. ATC will notify our network as more information becomes available, or as changes are legislated. We can also refer musicians and managers to election law experts, like Joe Sandler who authored this memo, for further advice.

February 2, 2010

MEMORANDUM FOR AIR TRAFFIC CONTROL EDUCATION FUND

FROM: Joe Sandler & Neil Reiff

SUBJECT: Impact of Supreme Court Decision on Ability of Artists to Engage in Political Advocacy

Last Thursday, the U.S. Supreme Court decided the case of *Citizens United v. FEC*. Basically, the Court ruled that corporations and unions can spend their own funds independently of any candidate or party, without limit, on any communication that says anything about political candidates—including "vote for" or "vote against." Corporations and unions can do this through any media, and at any time, up to Election Day.

Similarly, nonprofit corporations can accept unlimited corporate and unions funds, and use those funds to pay for independent communications that say anything at all in favor or against a candidate.

The Court's decision does not change the ban on corporations contributing directly to federal campaigns and political parties. That ban continues to apply, also, to any corporate spending on communications referencing a federal candidate that is in any way coordinated with a candidate or party committee.

Because concert promoters and bands are corporate entities, the decision opens up new possibilities for artists to engage in political advocacy, but some restrictions remain in place and there are still some unanswered questions:

Independent Advocacy—Candidates

- Bands and concert promoters, acting *independently* of any candidate or political party committee, can organize concerts to rally voters for or against a particular candidate—federal, state or local. The band or promoter can sell tickets and pay expenses as usual. A promoter can pay the band or not—the band can forego all

or part of their performance fee. The ticket purchases will not constitute political contributions.

- When a concert is promoted specifically to rally voters for a candidate or to communicate messages to vote for or against a candidate, most of the expenses may not be tax-deductible to the band or promoter as a business expenses. Depending on the circumstances, the sponsor of the concert may be required to file a simple form with the Federal Election Commission reporting the fact and amount of the expenditures for the event (independent expenditure report).
- During an event *not* specifically promoted as a political rally or concert, artists can freely speak out about political issues and candidates, again, assuming their decision to speak out and the message, etc. have not been coordinated or discussed with any candidate or political party committee. Artists can freely speak for or against candidates and can ask fans to vote for or vote against a candidate. In that situation, in our view, all of the expenses will still be tax-deductible, to the band or promoter. There would be no reporting requirements.
- No part of the proceeds of these events can be donated to any **federal** campaign or political party. (If the event is to promote a *state or local* candidate, whether proceeds can be contributed to the candidate's campaign will depend on state law—varies greatly from state to state).
- A band or record company can, acting independently of any candidate or political party committee, produce and distribute a recording that includes songs (and collateral material) that expressly advocate the election or defeat of candidates, without limit.
- Artists can freely advocate for or against candidates on their websites (including official websites), and through social media (Facebook, Twitter, etc).
- Artists can freely speak about candidates during media appearances and interviews, including displaying buttons, t-shirts, etc.

Fundraising Concerts and Other Events Coordinated With Federal Candidates/Political Parties

As of now the Court's decision does not change the existing restrictions on the ability of artists to participate in events that are coordinated directly with candidates and political parties:

- (1) For a benefit concert, for which tickets are sold directly by a federal campaign or party committee, and the campaign or party committee pays the costs of the concert or event—
 - Artists can freely donate their own time and services, rights to performance and use of name and likeness, without limit
 - Artists cannot force other people (crew, production labor, etc) to donate their time
 - Incorporated bands and production vendors cannot donate use of their facilities or equipment—lighting, audio, production facilities, etc.—to the event

- (2) For a concert or event (rally, etc.) organized by or in coordination with a federal candidate or political party, these same restrictions apply.

Direct Support for Candidates

- Incorporated bands and other corporations *still* cannot contribute directly to federal candidates or national political party committees. (The ability of corporations to contribute to directly to state and local candidates depends on state law, which varies greatly from state to state).
- Individual artists can contribute their own personal funds as follows (none of these limits were changed by the Court ruling):
 - To an individual candidate for U.S. Senate or U.S. House: \$2,400 per election, primary and general count as separate elections
 - To all federal candidates put together, in 2009-10, up to \$45,600
 - To a national party committee (DNC, DSCC, DCCC): up to \$30,400 per calendar year
 - To all national party committees, federal accounts of state parties and federal PACs put together, in 2009-10: up to \$69.900

Support for Nonprofit Organizations and Political Organizations

(1) For a concert, event or project organized and paid for by a nonprofit advocacy organization tax exempt under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, and organized independently of any candidate or political party committee:

- Artists can donate their time and services, rights to performance, use of name and likeness, all without limit.
- Incorporated bands and production companies can donate use of their facilities, personnel and equipment to the organization, without limit, regardless of the message of the concert or event – even if it’s a concert or event specifically to rally people to vote for or against a particular candidate

(2) For concerts and events organized by a political organization not registered as a political committee under federal or state law—that is, a so-called “527” organization—the question of whether an incorporated band or production company could donate use of its facilities, personnel, equipment, etc. to such a concert or event is an open question. The issue of whether incoming limits on contributions to a political organization or committee still apply if the organization or committee is going to use those funds only for independent expenditures, has not yet been resolved by the courts.

(3) For concerts and events organized by a federal PAC or a state political committee, for now, the above restrictions continue to apply—artists may volunteer their own time and services, but incorporated bands and production companies and vendors cannot donate their facilities, personnel or equipment to the concert or event.

(4) For events on behalf of non-profit advocacy organizations, including 527 organizations, the events should not expressly advocate the election or defeat of any federal candidate.

If you have any questions or need further information about the above or the implications of the case, please let us know.

About Air Traffic Control: ATC is a nonpartisan organization and exists to help musicians play an effective, unique and vital role in the promotion of social justice. Musicians and managers established ATC five years ago to assemble an experienced and trusted team of leaders, resources and tools that would help them to create more effective collaborations with each other and social justice organizations. As a result, ATC became an artists' air traffic control—one that develops capacity, efficiency, and coordination to produce stronger and more creative social change collaborations. For more information, please go to www.atctower.net.