



Citizens United v. Gessler Overview

Citizens United has filed a lawsuit in the U.S. District Court for the District of Colorado against Colorado Secretary of State Scott Gessler challenging the application of Colorado's campaign finance regulatory regime to the documentary film, *Rocky Mountain Heist*, which the organization plans to release this fall.

The lawsuit follows Gessler's determination that Citizens United film and related promotional materials do not fall within Colorado's various media exemptions and would be subject to Colorado's burdensome campaign finance reporting and disclosure requirements. The media exemptions, as enforced, protect the rights of the print media and broadcast facilities while discriminating against the constitutionally protected speech of speakers such as Citizens United. Relying extensively on its landmark win in *Citizens United v. FEC*, the lawsuit challenges the discriminatory reporting and disclosure regime that applies to electioneering communications and independent expenditures.

In its Motion for Preliminary Injunction, Citizens United says:

[O]ne is hard-pressed to hypothesize any basis for the discriminatory operation of Colorado's reporting and disclosure regime other than the view that some members of the media should hold a privileged position in the public forum and be exempted from the burdens imposed on other speakers who seek to opine on matters of public importance. But the Supreme Court has made clear that the "differential treatment" of media entities and non-media entities "cannot be squared with the First Amendment. The "press," the Court has emphasized, "does not have a monopoly on either the First Amendment or the ability to enlighten. Colorado therefore cannot create exemptions from its reporting and disclosure requirements that free a subset of speakers from these onerous burdens based

simply on their “media” status but that leave all other speakers—including other, less-favored media entities—saddled with those requirements.

The lawsuit seeks to block enforcement of the reporting and disclosure requirements on two separate grounds:

- 1) Colorado’s reporting and disclosure requirements violate the First and Fourteenth Amendments to the United States Constitution. The reporting and disclosure requirements for electioneering communications and independent expenditures are imposed on speech made by speakers like Citizens United, but do not apply to media entities that satisfy one of the state’s media exemptions. The state’s reporting and disclosure requirements are costly and their enforcement is likely to chill the speech of Citizens United and its supporters. Citizens United’s right to engage in political speech is significantly burdened while the rights of print media and broadcast facilities are not. This sort of discrimination based solely on a speaker’s identity is unconstitutional.
- 2) Colorado’s reporting and disclosure requirements for electioneering communications and independent expenditures violate the Colorado Constitution. The Colorado Supreme Court has noted that the Colorado Constitution “provides greater protection of free speech than does the First Amendment.” The Colorado Constitution, like the United States Constitution, protects against governmental discrimination based on the identity of the speaker. To the extent the reporting and disclosure requirements discriminate based on a speaker’s identity they violate the Colorado Constitution and must be enjoined.

Citizens United is asking the court to permanently enjoin enforcement of the reporting and disclosure regime in its entirety, or in the alternative, enjoin enforcement of the requirements as applied to Citizens United.

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