

LEGAL UPDATES

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Federal Campaign Finance Decisions

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On Friday, March 26, 2010, the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia issued decisions in two closely watched cases that consider the practical effects of the U.S. Supreme Court decision in *Citizens United v. Federal Election Commission*.

SpeechNow.org v. Federal Election Commission

SpeechNow.org is a group that solely intends to make independent expenditures and solely intends to raise contributions from individuals. Since it intends to engage in express advocacy, it meets the definition of a federal political committee. Federal law limits the amount of contributions that federal political committees can receive from individuals. It also subjects them to extensive organizational and reporting requirements. SpeechNow.org challenged the constitutionality of the individual contribution limits and the organizational and reporting requirements as applied to it.

Regarding the contribution limits, the U.S. Court of Appeals for the District of Columbia followed *Citizens United* and held that the amount limits are unconstitutional as applied to individuals' contributions to SpeechNow.org. Since the group only intends to make independent expenditures, the Court reasoned that there is no risk of *quid pro quo* corruption or its appearance from allowing SpeechNow.org to accept contributions that exceed the individual and biennial contribution limits for a federal political committee. Notably, the issue of whether a corporation could contribute to such a group was not before the Court. Also, the fact that the group does not intend to make contributions to other groups is significant. For groups that make contributions, amount limits serve the additional purpose of avoiding circumvention of the limits on such contributions to federal candidates and political party committees.

Regarding the disclosure and organizational requirements, the Court held that these requirements were constitutional and that a group intending to engage

in independent expenditures could be required to comply with organizational requirements and file periodic disclosure reports of its contributions and expenditures.

Republican National Committee v. Federal Election Commission

In this case, the District Court for the District of Columbia held that *Citizens United* did not undermine the Supreme Court's decision in *McConnell v. Federal Election Commission* upholding the fundraising restrictions placed on national, state and local political party committees for certain activities that they contend are not directly connected with federal candidate elections – for example, general party building efforts. The Bipartisan Campaign Reform Act of 2002 required many of those activities to be financed with federal funds. While noting that political parties are operating at a disadvantage as compared to other outside groups, the District Court determined that the difference in treatment was a policy issue that could only be addressed by the Supreme Court or Congress. Accordingly, the Court denied the request by the political party committees to allow them to raise non-federal funds to support specified non-federal activities. An appeal is likely.

Observations

These decisions highlight several important aspects of the *Citizens United* decision. First, lower courts may extend the holding of *Citizens United* to other fact patterns. *Citizens United* focused on corporate free speech rights. The *SpeechNow.org* case involved contributions by individuals to an unincorporated non-profit association. But since the Supreme Court held that making independent expenditures does not create a risk of *quid pro quo* corruption, the Court of Appeals determined that there was not a constitutional basis for limiting the amount of individual contributions to a group that solely intended to make independent expenditures.

Second, while the Supreme Court's focus on independent expenditures allowed the Court of Appeals to extend the decision to a different factual scenario, it also may operate as a limit on the *Citizens United* decision. In general, independent expenditures are activities that are conducted independent of political parties and federal candidates. When the activities involve political parties or candidates, as in the *Republican National Committee* case, courts may determine that the Supreme Court's decision does not afford those activities the same level of protection.

Third, in the *SpeechNow.org* case, the Court of Appeals held that the disclosure and organizational requirements for groups making independent expenditures were constitutional. This holding is consistent with the portion of *Citizens United* that upheld the disclosure requirements for electioneering communications. This decision thus reconfirms that disclosure and organizational requirements are generally constitutional and that political activities need to be pre-planned with those requirements in mind.

Neither of these decisions are final, and both are subject to the possibility of further proceedings. They were issued by federal courts in the District of Columbia. They may be persuasive to other courts but would not be binding on them.

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